

Justice P.B. Sawant

SOCIALISM

UNDER THE INDIAN CONSTITUTION

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;
and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

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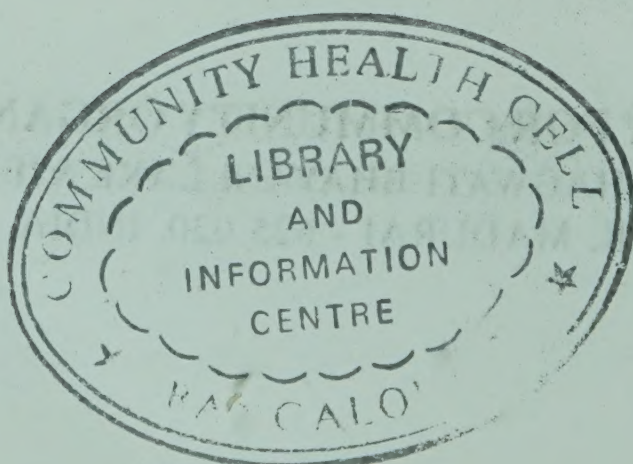
UNDER THE INDIAN CONSTITUTION

Justice P.B. Sawant

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SOCIALISM UNDER THE INDIAN CONSTITUTION

A BRIEF CRITICAL APPRECIATION :

Justice V.R. KRISHNA IYER

Former Judge
Supreme Court of India

A fine friend, a good judge, a creative jurist committed to the quintessence of the Constitution, has spoken and written on jurisprudence - related subjects with focus on "Socialism under the Indian Constitution". This collection is now for the first time appearing in a volume published by the SOCO TRUST, which is run by a team led by Mahaboob Batcha, a social activist of Madurai. SOCO is versatile and it touches nothing which it does not adorn. One such product is the Sawant Lectures on 'Socialism Under the Indian Constitution'. To talk on this topic needs clarity of thought, courage of conviction and capacity for progressive interpretation. Sawant possesses these traits in abundance and so his pen flows with felicity as he dwells on socialism and jurisprudence with confidence and authority.

It has been said that Constitutional Law is the meeting point between politics and justice and this is evident from a study of the pages that follow. The vista of themes the author has unfolded lends enchantment and erudition to the work as it emerges in a handy volume. Justice Sawant begins with an address on 'Socialism under the Indian Constitution', moves on to the 'Dignity and worth of the human person' without which society becomes barbarian. Values under International Instruments and Constitutional provisions do not operate by themselves, but need the locomotive of the judicial process. In the Third World, the presence of the robed brethren is an illusion unless lawyers and legal aid activate the delivery of justice to the lowliest, the lost and the least. Even the bar by itself cannot catalyze the justice delivery system. More is needed. The fourth estate, with its informational potential, must operate to defend the consumer of justice as well as of goods and services. And so Sawant handles the effective use of media and consumer protection as a subject of seminal significance. The Consumer forum has claimed his

attention as is evident from his inaugural address on the occasion of the workshop for woman activists. Elaborate and educative, this lecture illumines the reader's mental perceptions.

Human harmony and social justice are the sine qua non of the new World Human Order. Social progress and better standards of life in larger freedom are the goals which humanity pursues. Indeed, the United Nations Charter and the Universal Declaration of human rights promote harmony through peace, security and justice and national Constitutions have similar aims and ends. This broad theme consumes considerable time and space as Sawant, in a sweeping study, deals with the universal harmony - the need of the time. The role of jurists in establishing international order and universal harmony has also been dealt with by Justice Sawant in one of his presidential addresses. I wholly agree with one of his key observations:

"Whenever, therefore, we think of securing human rights to those who are deprived of them, we have to begin with the examination of our social structure as well as of the international economic order. If it is incapable of delivering the basic rights to everyone, it has to be discarded and replaced by a new one. Unless we are prepared to go that far, I am afraid all our talk of human rights will look superficial - at least not serious. And there is no reason why we cannot go that far".

Sawant is more than a jurist and sees in jurisprudence a means of establishing cosmic harmony, a sublime subject which he elaborated at Mount Abu in 1993 while inaugurating a Spiritual Session. There he begins with a poignant set of ideas, taking a holistic view of 'Man and his future'.

I quote him :

"The mankind today faces twin problems - the problem of co-existence of Man with Man and that of the co-existence of Man with Nature. Both problems are of his own making and their solutions also lie with him. What is needed is sagacity on his part. But that virtue is singularly lacking in him, particularly, when it is most needed. It was

Aristotle who called man a rational animal. The history of the human race so far has proved him wrong and what is happening around proves him wrong every day. We are driven to say today that if there exists any irrational creature on this planet, it is Man.

"How else can we account for the senseless killing of Man by Man in the games organised for sheer sadistic pleasures, the massacre of innocent men, women and children in organised wars and in the name of political creeds and religious fundamentalism, the manufacture of deadly weapons, the use of which will annihilate the entire human race and the nature, the production of dangerous goods and the employment of dangerous technology which puts at stake, the human life and the entire flora and fauna? How else can we explain the irrational organisation of our economic affairs where millions starve every day while millions of tons of foodgrains and food products are either burnt or dumped in the seas, to maintain the price line, and 1/3rd of the resources are diverted to the production of weapons? How do we explain the senseless breeding when the begetters themselves are in want of the basic necessities?"

We live at a time of human crisis while the struggle for human rights is moving militantly forward. A world of violence takes mankind towards disaster and the alternative is the promotion and protection of human rights through the rule of law and the role of the Court. The Vienna Conference, which has produced a Declaration and Programme of Action, has highlighted the paramountcy of human rights. However, political and civil rights seem to compete with social, economic and cultural rights, but a synthesis of the two Covenants alone produces that fair opportunity for the unfoldment of personality without which the right to life becomes a paper promise and vegetable existence. The Sawant vision of a synthesis of human rights, in their many dimensions, is unravelled in a long Lecture at the 5th Conference of Chief Justices of Asia and Pacific. There he deals with sublime philosophy, pragmatic problems, corrective proposals and the reform of the judiciary. The Court is losing its credibility and its functional success demands many mutations. Hopefully he observes: "The hillocks have been climbed. The mountains are yet to be scaled".

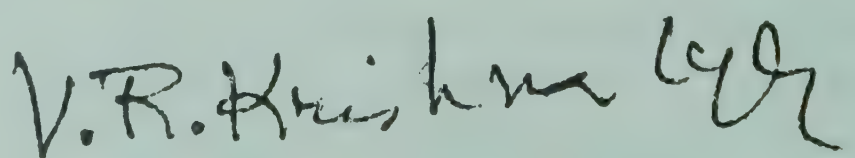
To my mind the Everest is far away and Operation Downfall is active. Optimism must, therefore, be supported by meaningful action. This book of Sawant may 'lead kindly light amidst the encircling gloom.' That light is contained in the Preamble to the Constitution which breathes life into the Sovereign Socialist Secular Democratic Republic. Nehru in his Lucknow Address (1936) has expressed thoughts which ring a bell in every enlightened Indian heart:

"I am convinced that the only key to the solution of world's problems and India's problems lies in socialism and when I use this word I do so not in a vague humanitarian way but in the scientific economic sense. Socialism, is however, something even more than an economic doctrine; it is a philosophy of life and as such also appeals to me, I see no way of ending the poverty, the vast unemployment, the degradation and subjection of Indian people except through socialism. This involves vast and revolutionary changes in our political and social structure, the ending of vested interests in land and industry as well as the feudal and autocratic Indian states system. That means ending of private property except in a restricted sense and the replacement of the present profit system by a higher ideal of cooperative service. It means ultimately a change in our instincts, habits and desires. In short it means, a new civilisation radically different from the present capitalist order".

After all, a human being becomes human only when material advance is matched by spiritual ascent. Nehru again:

".....apart from material development that is imperative, I believe that the human mind is hungry for something deeper in terms of moral and spiritual development, without which all the material advance may not be worthwhile".

Justice P B Sawant is one of the many Jurists and humanists-I belong to his tribe-who have been inspired by that noble, but slowly obsolescing soul of Jawaharlal.



Cochin

V.R. Krishna Iyer

PUBLISHER'S NOTE

P. KRISHNASWAMY

Secretary

Documentation Centre

**SOCO TRUST,
MADURAI.**

Society for Community Organisation (SOCO) which has played a key role in presenting the lay reader, legal profession and connoisseurs of legal and socio economic history, works of eminent jurists, is once again privileged to add one more such book to its range of publications with Justice P.B. Sawant's "Socialism under the Indian Constitution".

Justice Sawant is credited with using his legal scalpel to bring out deep and dangerously embedded socio economic cancer in our society. These collection of his speeches delivered at various times in different contexts given the reader a ringside view of what goes on around us.

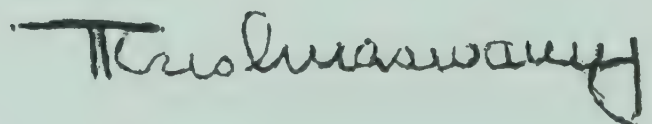
Justice Sawant, not known for pulling his punches, presenting boquets where they are due and hurling brickbats where they deserve had presented his views on various subjects with clarity, which only he is capable of.

SOCO Trust, is happy that it has been able to play a role in presenting his thoughts and works to the reader.

We are grateful to Justice P.B. Sawant for permitting us to present his ideas in black and white

Our thanks are also due to Mr. P.K. Sharma, Additional Registrar cum Private Secretary to Justice P.B. Sawant, for his valuable assistance in collecting these lectures, and Mr. S. Syed Ahamed of SOCO Trust for designing the cover and assistance.

We sincerely acknowledge our thanks to Mr. G.N. Babu of SOCO Trust as well as staff of Laser World and Classic Offset Printers, who took up this job enthusiastically and finished it in record time.



P. KRISHNASWAMY

SOCIALISM UNDER THE INDIAN CONSTITUTION

The Progressive Law Association deserves congratulations for organising this seminar at a time when the concept of "socialism" has become not only an anathema but a word of abuse almost all over the world. All winds are blowing against it and many former socialists are ashamed of confessing that they were adherents of the ideology. Some intellectuals are hibernating under the specious plea that they are having a fresh look at the very philosophy of socialism. The organisers of the Seminar, therefore, deserve all the more kudos for showing intellectual courage and integrity amidst defeatism, breast-beating and pseudo intellectual introspection. I do not hold any brief for Communists. But time was when the Communists in this country were being criticised for being intellectual slaves of the Soviet Union. It was derisively said that if it rained in Moscow, the Communists in this country would open their umbrellas. Now these very critics want the socialists and communists in this country to forsake their ideology, merely because the Soviet Union and the other socialist countries have abandoned it. It appears that intellectual slavery is not reprehensible, if it serves the sectional interests of some. Be that as it may.

Before we refer to the relevant provisions of the Constitution which have a bearing on socialism, it is necessary for us to understand what we exactly mean by socialism. Socialism like some other concepts has acquired a traditional meaning and it is associated with a particular economic arrangement, a particular way of life. It is not necessary to trace the history of socialism to the great philosopher Plato who lived and worked in 4th and 5th Century B.C., nor even to Lord Buddha, who preached the socialist way of life during the 5th and 6th Century B.C. The modern thought and concept of socialism can well be traced to Saint Simon who worked and lived during the last half of 17th Century and the first half of the 18th Century A.D. and thereafter to Charles Fourier, Robert Owen, Karl Marx, Lenin and Mao tse Tung. In our country, these threads of socialist thought were picked up by Acharya Narendra Dev, Jayprakash Narayan, Dr.Lohia, Dr.Ambedkar and Pandit Nehru. There are different shades of thought

and according to them, there is a spectrum of socialist theories generally known as Utopian socialism, scientific socialism, Fabian Socialism, guild socialism, syndicate socialism, democratic socialism, State Socialism and Gandhian Socialism.

To-day socialism has come to be associated with certain social and economic arrangement and a way of life. In a socialist economy the resources of the society are owned by the society as a whole and are used for the benefit of all for ensuring all basic human rights to every member of the society, and not for the profits of the few. By human rights is meant - all economic, political, social and cultural rights which are necessary for an individual to realise his full potential. In a socialist society, social, political and economic inequalities disappear and none is allowed to possess economic power to the extent that he is in a position to exploit or dominate others. "From each according to his ability to each according to his needs" is the guiding policy of such society. It is only such society which can guarantee human dignity, stability, peace and progress.

The aforesaid contents of a society is the minimum that can be expected from any organised structure of a civilized society. It is difficult to envisage what other objective there can be for any civilised human society - what ever the brand-name that can be given to such a society. If 'socialism' jars some ears they may give it any other name. But whatever the name that is given to such society, its content and objectives must be as aforesaid. It is this essence of the society which was accepted by our Constitution-framers.

That the aforesaid goal cannot be achieved under capitalism which is the only other serious contender to the throne, has been proved over the last more than 200 years during which capitalism has been practised in various parts of the world. Capitalism has been described variously as laissez faire economy, market - or free market - market friendly - or market oriented economy etc. Even the staunchest supporters of the capitalist management of economy cannot and do not claim that under such an economy every member of the society would at any point of time be assured of all the economic, social and

cultural rights or that an opportunity to realise the full potentials of personality can be available to all members of the society or that social and economic equality will prevail under it. In fact, capitalism is associated with gross inequalities, unemployment, inflation and periodic recession and wastage of resources bringing in its wake untold avoidable misery. Free enterprise means appropriation and unregulated use of resources by the few; that economic might is right; that competition however wasteful in terms of resources is a must; that unemployment and inflation are a necessary evil; that concentration of economic resources and power in the hands of the few is inevitable; that profit is and can be the only motivating factor for undertaking production and the sure standard for measuring efficiency, that those who eventually come to acquire control over the economic machine of the society alone can decide what and how much is to be produced, hoarded and supplied, and at what level it is to be priced, and whether the production should continue or stop. Such an economic management, on the face of it is highly arbitrary, unscientific and irrational and a disgrace to human intelligence. It is precisely because of its barbaric nature and its naked power of exploitation of the society that serious thinkers came out with the concept of the socialist economy. It was an advance both in the evolution of thinking and in the theory and practice of management of the resources of the society and their use and application on a rational basis. Its basis is that all resources belong to the society and hence they must be used efficiently for the benefit of all the members of the society. There is no master and no servant. All are owners and equal partners in the process of production and distribution which has to be organised for the greatest good of all. It is practicable to achieve the said goal by intelligent planning of the use of resources and by evolving a cooperative and participatory model of management of production and distribution. It is not and cannot be disputed that man can intelligently use the resources for the benefit of all. If that is so, there cannot be a rational objection to any system which intends to do so. That is the essence of the concept of socialism. It is this concept of socialism which was also in the contemplation of the framers of our Constitution.

PROVISIONS OF THE CONSTITUTION BEARING ON SOCIALISM

What many do not know is that it is not the 42nd amendment of the Constitution which made our Constitution socialist. The amendment only made explicit what was implicit. The Preamble of the Constitution among other things pledges to ensure social, economic and political justice and equality of status and opportunity. A perusal of the Directive Principles of State Policy would further convince anyone that the said principles contain the essence of a socialist society and they cannot be enforced except under a socialist management of economic affairs. Article 38 states that the State shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political, shall inform all the institutions of the national life and that it shall, in particular, strive to minimise the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. Article 39 enumerates some of the basic economic rights and states that the State shall, in particular, direct its policy towards securing [a] that the citizens, men and women equally, have the right to an adequate means to livelihood; [b] that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; [c] that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment; [d] that there is equal pay for equal work for both men and women; [e] that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; [f] that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 41 states that the State shall make effective provision for securing the right to work, to education and to public

assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want although this Article states that this is to be done within the limits of its economic capacity and development. Article 43 enjoins the State to endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 43A mandates the State to take steps, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Article 45 spells out the basic educational right and requires the State to endeavour to provide free and compulsory education for all children until they complete the age of fourteen years. Article 47 requires the State to consider among its primary duties, duty of raising the level of nutrition and standard of living of its people and improvement of public health. Article 48A enjoins the State to endeavour to protect and improve the environment and safeguard forests and wild life of the country.

Even a cursory glance at the Directive Principles would convince anyone that the duties cast upon the State to implement them cannot be performed by the State unless the economy of the State is organised on a socialist basis. In fact, the Directive Principles encapsulate the essence of socialism. It is a known fact that some members of the Constituent Assembly including Dr. Ambedkar, the Chairman of the Drafting Committee, wanted the Directive Principles to be incorporated in the chapter on Fundamental Rights. They also wanted it to be provided in the body of the Constitution that the State shall endeavour to establish a socialist society in this country. It was a matter of compromise that an arrangement was arrived at whereby no mention of the word 'socialism' was made in the body of the Constitution; but the essence of it was incorporated in the Directive Principles which were accommodated in a separate chapter requiring the State to so formulate its policies and programmes as to lead eventually to the attainment of the said principles.

It is also necessary to distinguish the kind of socialist society which was in the contemplation of our Constitution- framers, from the experiment of socialism which was carried on at that time in Communist countries such as Soviet Union, Eastern European countries and China. Our Constitution did not accept the concept of totalitarian State or one-party dictatorship. On the other hand, the Constitution framers made a deliberate choice of a pluralist society with autonomous and self governing institutions and organisations including political parties. It is for this reason that all civil rights were recognised as fundamental rights and were made enforceable by providing the remedy for enforcement of the civil rights also as a fundamental right. Although it is not stated in so many words that our society is pluralist with multiple political party system, the concept of such society is spelt out, particularly, by the Preamble and by Article 19 of the Constitution. The freedom of speech and expression, freedom to form association and to move freely throughout the territory of the country and to practise any profession or carry on any occupation, enable people to propagate any ideology and to form any association including any political party. It is this freedom which also, among other things, enables people to form trade unions and trade associations, cultural bodies, educational institutions and religious organisations, to run the print media, to stage dramatic performances, exhibit films and publish literature, to stage demonstration and hold public rallies and meetings etc. untrammelled by the State intervention. Social autonomy and political democracy thus guaranteed by the Constitution distinguish the type of socialism envisaged by our Constitution from the socialist experiment in the other countries. What was in essence envisaged by our Constitution was democratic socialism which while guaranteeing civil rights also endeavoured to secure all economic rights to every individual and to abolish social and economic inequalities and exploitation by a few of others. In this respect, our Constitution is undoubtedly a unique document since in the rest of the world while some countries guarantee only civil rights and others only economy rights, our Constitution while guaranteeing civil rights, our Constitution while guaranteeing civil rights, enjoins the State to secure economic rights

as well. For we believe that without both - the civil and economic rights - there shall be neither democracy nor socialism in any society.

WHY SOCIALISM FAILED IN OTHER COUNTRIES?

The precautions taken by our Constitution-framers to make provision both for civil and economic rights was necessitated by the lessons learnt from the practice both of capitalism and socialism in other countries. Having learnt the lessons from both the said experiments, our Constitution framers rightly came to the conclusion that mere assurance of civil rights without economic rights may only lead to giving a blank charter to a small section of the society for dominating and exploiting others. They also noted that a mere guarantee of economic rights without the guarantee of civil rights would convert the society into a dictatorship of the ruling junta, affronting human dignity, stifling the growth of personality, encouraging the growth of a new class of exploiters and degenerating socialism into bureaucratism, which would eventually crush democratic rights of the people. Economy and society would thus cease to grow resulting in stagnation, authoritarianism, corruption, suppression of innovation and talent, giving way to manipulation and sycophancy. Over the years, as the experiment in socialism around us shows, this fear proved real and the so called socialist experiment without social and political democracy failed as it was destined to.

In the so called socialist countries, the relationship of master and servant did not change as it was expected to do. The place of private owners was taken by the party and government bureaucrats and the relationship between them and those who worked under them always remained as that between employer and employee - nay, it became worse. The servants had no right even to dissent or protest whatever the misdeeds of the masters, since their freedom of expression and organisation was taken away. Instead of the representatives of the society and the workers coming together as joint participators in the process of production, the workers' position was reduced to less than that of slaves working under the heavy boots of the bureaucracy. The production whether in industry or agriculture was managed by salaried employees who had no interest except in their salaries and perks.

The right to work once secured became also a right not to work. Instead of endeavouring to increase the production and experimenting with new ideas, the State managers found security in furnishing false figures of production, in adopting the least risk policy and in continuing the traditional line of production. Being accountable to none except their bosses, they indulged in corruption and manipulation. The result was that the production suffered, costs mounted, resources were wasted and uneconomic units continued to remain in the field. Eventually, the so called socialist management which in effect was no more than bureaucratic management of the economy failed.

The absence of freedom of expression and organisation virtually suppressed all dissent and protest. "Do as you are told" was the governing policy. This effectively suppressed initiative and criticism of the faulty, wasteful and uneconomic practices and prevented exposure of sloth, corruption, nepotism and manipulation.

One party dictatorship resulted in the growth of dual bureaucracy - the party and administrative bureaucrats, and between them, they succeeded in grinding out the productive mechanism. The inflexible guidelines and unrealistic quotas of production, stereo-typed and outmoded mechanisms and practice and red-tapism did the rest.

After having secured the basic economic rights, the people and particularly, the young generation who were not wedded to the revolutionary goals of the socialist society, fell a prey to consumerism and started demanding more and more sophisticated varieties of goods and services. A planned economy cannot provide for more than a limited varieties of the goods and services at any particular period of time. This generated simulated discontent which was deliberately fomented by exposure to the ostentatious styles of living of the affluent in the capitalist economies. In the absence of the inculcation of individual and social values, the discontent ultimately brought about the collapse.

Thus it is not socialism that failed. It is our method of organising and managing the socialist economy which failed. There is no one road to socialism or only one model of managing it. As stated above, the model chosen by the Soviet Union and the East European

countries was no model for building a socialist society. Without social autonomy and political democracy, the model was bound to fail, which it did.

WHAT IS NECESSARY TO MAKE SOCIALISM SUCCESSFUL ?

The first and foremost step to make socialist economic management successful is to evolve a proper model of management, in which there will be no employer and employee relationship. The managers of the productive units and the workers - whether intellectual, technical or manual - would be participants at equal level in the process of production. The management would consist of the manager, the representatives of the workers as well as the representatives of the consumers of the product to represent the society at large. All decisions right from the managerial to the floor level and from the stage of production to the sale of the product have to be taken by the said body of management. All the participants should have an equal stake in the prosperity of the unit.

There has to be a planning of population and also planning of the availability of manpower of varied categories. This would also include planning of education. Family planning should be made compulsory. Nobody should have a right to breed beyond the limits laid down and to deprive others of their basic human rights. The suitable legislation to discourage more than the standard size of family should be undertaken. At the same time, inculcation of new personal and social values is a must. Among the personal values the need to give to the society the maximum of one's endeavours and to take from the society the minimum that is necessary, to share the surplus in one's unit with others till all are assured of their basic economic rights, to abide by the discipline, to avoid consumerism, to avoid waste, to excel in one's occupation, to restrict family size, to look upon oneself as a trustee of the society whatever the capacity one may be working in, to inculcate scientific temper, a spirit of inquiry and of reform, to safeguard public property and abjure violence are a must. Article 51A of our Constitution which enumerates the fundamental duties in effect prescribes the individual and social values of a new society.

THE PRESENT STATE OF AFFAIRS

Those who advocate capitalist form of economy forget that the capital used by the private entrepreneur does not come from their pockets but from the pockets of the members of the public in the form of share money, deposits, loans from banks and financial institutions, subsidies and exemptions from the Government and various other facilities provided to them at the cost of the society. Today's capitalist is no more than an entrepreneur who is expert in organising the capital and marketing the production. He is not a capitalist in the sense that the capital that is invested in production belongs to him. In effect, therefore, he is not entitled to anything more than his remuneration for an expert management. In other words, the so-called capitalist economy is no more than a public economy.

On the other hand, the capitalist economies of the world are also planned economies to the extent of 30 to 40 per cent of the economy. They are also subject to certain regulations. There is further, no such thing as free-market economy or free-enterprise. It is the monopolies in these economies which devour the rest of the entrepreneurs. Instead of free-enterprise, there is thus monopolistic enterprise, and the production distribution and pricing is determined ultimately by the caucus of monopolies in each branch of production. Thus, to-day, in no part of the world there exists a free-market economy. The market is controlled and manipulated by the powerful few in the economy.

SOCIALIST ECONOMY - A PHYSICAL IMPERATIVE

The unrestricted consumerism which the capitalist economy inevitably injects into the society for more and more profit, and more and more avenues for profit, and the unhealthy cut-throat competition between different producers of the same product, ultimately leads to uninhibited exploitation and destruction of resources. The want of regulation also encourages methods of production which pollute and destroy land, air and water and, therefore, the entire flora and fauna. The same freedom to produce and supply anything that can sell and earn profit also leads to introducing into the market products danger-

ous to health and well being of mankind. The very same freedom to exploit the resources to any extent and in any manner and the desire to earn profit by monopolising the market and driving out the other products also leads to changing products at short intervals rendering the earlier products out of date consequently leading to a waste of resources that have gone into producing them. The uninhibited unnecessary production through dangerous technology has been responsible all the world over for destruction of non-renewable natural resources, ecological imbalance and pollution of air, water and land. If this process continues, the earth will soon be reduced to a desert without the use of the nuclear arsenal. The effects of the dangerous technology and dangerous products are already being felt and need no elaboration. Thus to preserve the precious non-renewable resources of the planet, to maintain the ecological balance, to prevent pollution and to protect mankind against the evils of consumerism and unhealthy competition, it has become absolutely necessary to control and regulate production. This means that the social ownership of resources and the control over what will be produced and how much and how it will be produced has become an absolute necessity of the day. Such a control is possible only in a socialist management of economic affairs. It is not possible in a free enterprise economy.

THE NEED FOR SOCIALISATION OF ECONOMY ALL THE WORLD OVER

The aforesaid discussion with regard to the arbitrary unscientific, and outmoded capitalist method of production and the need for rational planning of production would show that all countries - whether it is America, Japan, Germany or England will have, eventually, to bid farewell to the capitalist economy which leads to unemployment, inflation, recession and impoverisation of vast masses of people, to social and economic inequalities, unhealthy competition, consumerism, waste of resources, ecological imbalance, environmental pollution and destruction of precious resources and to accept socialisation

or democratization of their economic affairs. Just as today the Communist countries have been forced to decomocratise their political structure, the capitalist countries will have to adopt socialisation of their economy. The welfare of mankind, its peaceful existence and progress depend on a blend of socialisation of economy and democratisation of social and political structure.

IS IT IMPOSSIBLE TO EVOLVE A RATIONAL STRUCTURE FOR THE MANAGEMENT OF HUMAN AFFAIRS ?

It sounds positively absurd that the vital aspect of human existence namely the management of the economic affairs of the society should be left to the arbitrary and chance forces of supply and demand, and that the decisions in the said sphere should be left to the profit motives of the few individuals. It also sounds incredible that human intelligence, so far, should have been unable to construct a structure of society and evolve a system in which these affairs can be managed rationally and scientifically. It is amazing that the so-called 'intelligentsia' in the society who otherwise waxes eloquent against the arbitrary exercise of governmental power should at the same time sing paens of praise of and advocate free enterprise which is inherently arbitrary and selfish and which thrives on the exploitation of the society bringing within its wake, untold miseries to all but a few, through recession, unemployment, inflation etc. In the haven of capitalism, the United States, industries after industries are closing and today the unemployment is well over 7.5 % of the population. About 11% of the population lives below poverty line. The threat of recession is looming large. This scenario is present in all other capitalist countries with differing details. That so far, man should have failed to evolve a proper structure of society based on rationalism and scientific method of management of its affairs, is the single most darkest spot on human civilisation and human intelligence. In democratic socialism, with the proper model of management, with planned economy and planned population, lies the future well-being of mankind.

WHAT IS NECESSARY TO MAKE DEMOCRATIC SOCIALISM SUCCESSFUL

To make a socialist economy successful, it is necessary -

- a] to have a new model of management of the production units which will ensure the participation of the managers, workers and the representatives of the society, at all levels of decision making and at all stages of production;
- b] to check consumerism and to minimise the needs;
- c] to inculcate in every member of the society the virtues of contributing his utmost to the society and to excel in work whatever the occupation and whatever the capacity in which he is engaged in such occupation;
- d] to inculcate in every individual a sense of obligation and responsibility towards others to demand no more than is necessary to make his living comfortable;
- e] The sense of responsibility to others should also include the duty to limit the size of one's family and to abide by the guidelines given by the society in that behalf. Every member of the society must realise that by breeding an additional mouth, he is depriving others of their legitimate share in the wealth of the society and of the right to live comfortably. He has no right to deprive others of their legitimate dues.
- f] Every member of the society must also, remember that whatever surplus is created in his production unit after meeting his needs for a comfortable life, is meant for the benefit of the rest of the society and he should not only continue to produce more and more in his unit, but also learn to contribute more and more to the rest of the society to enable others to live equally comfortably. He should, further, remember that the resources used in his production unit belong to the society at large. He is only a trustee of the said resources whatever the capacity in which he is working there - whether as a manager or worker.

- g] to plan education and man-power and to enforce family-planning.

[Keynote address delivered at the conference on "Socialism under the Indian Constitution" organised by the Progressive Law Association, Bombay- at Bombay on 28.3.1992]

LEGAL AID AND ROLE OF LAWYERS

The President of to-day's function, District Judge Pratap. Singh, Justice Bhaskaran and Friends,

I don't say formally but to say from the bottom of my heart that it gives me pleasure to be here amidst you and to address you under the auspicious of this District Legal Aid Committee. I am informed that this Court and therefore this Bar is the oldest in the State and therefore, I feel specially privileged to have been invited to speak under the auspices of this Legal Aid Committee. Fortunately for us, I believe, you must be putting up with this kind of noise during Court hours, but it distresses us, particularly when we are secluded from the hum drum of public life anyway.

As I was saying, happily for the last many years the concept of Legal Aid has undergone a change for the better. It is no longer considered as a charity by the society of the affluent to the needy ones but the right of those who are in need of it. In fact, as far as our Jurisprudence and Constitution are concerned, we have to consider it as not only a human right but also as a fundamental right.

Fortunately for us, those who presided over the Apex Court during the last decade or so had a larger vision and a greater perspective. Due to their comprehension, the fundamental right to life has also come to be expanded to such an extent, that to-day, it also includes right to livelihood. Not only that, but if that kind of logic is extended, then we will have to include in this, the right to life, adequate remuneration and old age pension, so on and so forth. But if you notice the scheme of rights in our Constitution, you will find that these economic rights have been included not in the Fundamental Rights chapter, but in the Directive Principles chapter. That was not to say that these rights were not fundamental. In fact, the chapter on Directive Principles are in so many states, but although these economic rights are not included in the fundamental rights chapter, they are nevertheless found in the governance of the country. Whereas the fundamental rights can be enforced by the citizens against State, the economic rights included in the Directive Principles cannot be enforced against State. But, if the state wants to enforce them, it can

do so and the decisions of the Supreme Court had held that if there is conflict between law enacted by the State to enforce directive principles and therefore economic rights and the rights under the fundamental rights chapter, then the law notwithstanding this conflict will prevail. In other words therefore, the State can enforce these economic rights.

As I was saying, although logically, we can extend right to life which is included in the fundamental chapters to include the one in these economic rights, to-day for want of resources they have been separated from the fundamental rights and included in the Directive Principles. Nevertheless, the right to justice cannot be divorced from right to life and therefore, it will have to be considered as a fundamental right as such important as the right to life itself and if that it so, then all that is necessary to enforce right to justice, will also be part of the fundamental rights. Legal Aid is conceived as aid to the poor or to the needy or to those who cannot otherwise assert and secure their right to justice, to assist them to do so and by this logic, therefore, right to legal aid also becomes a fundamental right and to-day therefore, when we evolve and try to enforce the legal aid and advice scheme, we have to look to these schemes as not matters of charities, as not matters which can be gradually handled, but which have to be seriously enforced. The right to justice however is denied to-day to a very vast section of our society on account of several things and chief among them are poverty and ignorance, coupled with them of course the distance from the Courts, the delay in disposal of cases and corruption.

As far as poverty is concerned, it is not necessary for me to bring to the notice of this learned gathering that based on Government admission, not less than 37% of population lives below the poverty line. That does not mean that those who are above the poverty line, are able to approach the courts. I believe that not more than 5% of the population on its own can come to the Court, for, the cost of litigation has gone up so high, that even a middle class man resorts to courts only as a last resort.

This is not only the case in this country, but we are concerned only with this country. Therefore, we will speak only about the facts of this country. Even in the most prosperous country like United States, it is said that only the most rich and most poor can approach the court. Most poor because they, as pointed out to you earlier by our District Judge, the legal aid schemes are really effective and the poor, those who are in need can approach the court through the machinery of the legal aid. Added to that there is the system of the champerty litigation. You don't have to pay in advance your fees. Lawyers fight your cases and then get a cut that is legally allowed, which is not allowed in this country for various reasons. I need not go into that question. As I have pointed out to you, even in this country also, the cost of litigation has gone high. In fact, we hear, in High Courts, I do not know about the District Courts in this State, I now about the District Courts in my State, there are also senior lawyers, who are much in demand, and who charge fees in an astronomical figure.

There is a story going round in Supreme Court that one prominent lawyer who is otherwise very fond of giving moral lectures to the rest of the community, charges fee not less than a lakh just for asking for fixing date. Senior lawyers are not normally allowed to mention matters for dates and such discretionery reliefs and because of the fees demanded, he breaks professional bar there. There are people who charge every day in certain cases not less than Rs.50,000/-. Sometimes the appearance does not last for more than 5 minutes or 10 minutes.

When we talk of the cost of litigation, let us also be clear what exactly we mean. If you examine the Civil Procedure Code, you will find and coupled with the Court Fees Act, you will find and that there is a table of fees and Civil Procedure Code laid down and also the provision for those who do not have means to file their litigation without paying fees. Common man's cause does not have much value. In fact, he can afford to pay court fees which are laid down, which are not very much as far as his cause is concerned. We are not very much worried as far as his cause is concerned. We are not talking of the causes of rich and even there, there is maximum ceiling

of fees, namely Rs.50,000/-. Therefore, as far as civil litigation is concerned, the common man with the present table of fees, can afford to pay for his cause because his claim is always small. As I said, if we are unable to pay, there is provision in the Civil Procedure Code that we need not pay.

As far as criminal litigation is concerned, whether it is prosecution or defence, for the causes you don't have to pay anything in terms of Court fees, only Rs.2 stamp and one Vakalathnama and a stamp of 1 rupee or Rs. 2 stamp on complaints and applications when they are made from time to time. Therefore, the cause of litigation to-day virtually means the cost of the lawyer and his fees. Let us acknowledge this fact.

I don't want to suggest that our lawyers should not charge fees, I know of several cases where lawyers who fight for poor litigations don't charge any fees, but charge only nominal fees and what I would suggest is that you do charge fees from those clients who can afford to pay your fees. I would suggest you charge even more than your normal fees, but in compensation do work for the poor without changing any fees, but charge only nominal fees, and that will be one way of doing social justice. You will fight a litigation for the poor with the money of the rich.

The only other rule that I would request my lawyer friends to follow in their practices is that no litigant is sent away by you because he has no fees to pay. If these two rules are followed, then the party need not go even for legal aid and advice scheme. He can as well do away with it. As far as the ignorance is concerned, All India statistics show, you all know, that about 65% of our population is illiterate. But it again does not mean that all those who are literates know the law, in fact legal literacy is something different from ordinary literacy. Even the most educated not in law but in other branches of life, do not know law. In fact, thanks to our legislature for that matter, thanks to our draftsman in the Secretariat, the laws are framed and drafted in such language which even lawyers and judges find it difficult to understand. In fact, it takes days together to interpret the meaning of law and many of our working hours are spent by trying to struggle to understand

what the draftsman means. The truth is that it is not the ministers or legislatures who draft the legislation. They pass legislation. But, I am sure that most of them don't have time to go through the legislation which they pass. Even if they try to do that, they will not understand it, not because they have no capacity, I may say with respect, because they have no capacity as the lawyer to understand.

As I said, even the lawyers and judges take days together to understand the meaning of the law. Even to-day, the drafting of laws are on the pattern of Anglo Saxon Law. If you want the law, the Minister has only to tell the legal cell in the Secretariat, that I want the law on this particular topic and the draftsman is not on higher level than that of Deputy Secretary or Under-Secretary. The first thing he does is to find out, whether there is law in Anglo Saxon countries on the subject concerned and he will take that draft and try with certain modifications here and there to produce a law for the Department concerned. So much so, sometimes it is an amusing experience that chapters, sections and clauses of foreign laws are verbatim incorporated in our laws. Those who are interested in tracing the ancestry of many of our laws if any subject will make rewarding research in this particular subject, and I am sure you will come out with valuable material.

Although to-day, it is realised that laws should be in local language, that is in vernacular language, we find that vernacular language laws are nothing but literal translation of the English laws which are themselves no better on the language law. The difficulty is that sometimes this vernacular translations are so difficult to understand that we have to re-translate it in English to understand what the draftsman in vernacular language means.

Friends, nothing has changed in this country, although we have won political freedom, as far as those courts are concerned, right from the robes of the lawyers and Judges to the drafting of the decrees, every thing has remained as it is. Not only the Anglo Saxon Jurisprudence and the system, but also the manner of operating it, the institution which go with it, everything has remained as it is. We have got to change the system. We can draft the laws in very simple

language in vernacular and there have been idle laws enumerated in erstwhile princely states in pre-independent states. If I don't know about the laws in the States, the Princely states, but I have gone through the laws of Baroda and Kolapur, they are in Marathi and Gujarathi language which has to be taken, that is in the idioms which belong to us and which is intelligible to our people. The law should be in such language which even the new literates will be in a position to follow as soon as they read it. They don't have to read it and re-read it.

So, this distance which is created between those who know laws and those who do not know laws has to be breached before other distances are breached. The ignorance of laws is heightened because of the difficult language of the laws. We have therefore firstly to simplify the laws as I said we have to not only translate them but draft them originally in the original vernacular language. This is as far as the ignorance is concerned and as far as the poor and the needy who have to go without education, we have to undertake campaigns for legal literacy. There are many today who don't know what the law is, but even they were not aware of the existence of the courts of law; forget about their awareness of the rights and the remedies. This awareness has to be created not only by the laws but also by the students of law and teachers of law, social workers and those who received para legal training.

In fact para legal training is undertaken for social workers with this object, not only under an auspices of the various voluntary organisations. Therefore, that is one of the programmes that the Legal Aid Committee will have to undertake.

As regards the distance from the court is concerned, which also contributes to the denial of justice, when the courts are situated at far away places from the people, they feel as if justice itself is away from them. Therefore, there is a need for decentralisation of judicial system right from the Apex Court to the taluks or Munsif level. Fortunately, recently there is a trend favourable to the decentralisation of administration of justice. Those who might have heard the views of the present Chief Justice on the national court of appeal must have

noticed that he is one of the advocates of establishing national courts of appeal which would take away from Supreme Court, all work other than the work in which constitutional issues are involved. In other words, all civil, criminal, revenue, taxation and in all other matters which are to-day being disposed by the Supreme Court, can very well be transferred to the national court of appeal. The Supreme Court confining its jurisdiction only to constitutional issues. If this proposal goes through, I am not hopeful that it will go through and I will tell you the reasons later. But, if this proposal goes through it will be decentralisation of the Supreme Court itself. There is a demand that Supreme Court should have its branches or seats in four corners of the country. The national court that is envisaged by some, will have seats in north, south, east and west dealing, as I said with all non-constitutional matters, and it will also take away the burden from the Supreme Court. But, as I said, there is a good deal of resistance and the resistance is mainly from the legal profession and also some members of the judiciary.

I have found that whenever there is a talk of decentralisation, the lawyers at a particular place where a Branch of the High Court or a District Court is needed will be vociferous in their demand for decentralisation. But when their own court is sought to be split up for decentralisation, there is resistance from those people. That is my experience in Maharashtra, that I experience in some other States.

As regards the decentralisation of High Courts are concerned, in some states we do have more benches than one. There is a report of a committee on establishment of Branches of High Courts. The situation has become delicate in some parts of the country and I understand even in this town on this issue. Therefore, I will speak no more upon it. All that I will say is that I am one of those who is in favour of decentralisation even now. I don't want merely a decentralisation of Supreme Court and High Courts, I want decentralisation of the District courts and Taluka Courts. If I ever suggest to you that if there are any Talukas which bring to the District Court more than 30% of civil and criminal litigation and therefore, there should also be additional District Judge at that particular place and I am sure many of you will resist it, because that will reduce your work. That kind of

an attitude is not logical and if you are in favour of decentralisation of administration for the sake of litigant then you must not resist these changes. You must understand and remember that the courts of law should exist for litigants and not for lawyers and judges. As far as Munsif's courts, Taluk courts are concerned, there is a very good proposal made by the last Law Commission Report. They have suggested Gram Nyayalayas or Village courts. The idea is very revolutionary. But if accepted, will be very effective. It envisages that Taluka Munsif assisted by two assessors and two laymen who are independent, not drawn from the areas where disputes or offences take place. It is a sort of mobile court. The idea is that Munsif along with two assessors will go to the spot where dispute has arisen or offences have taken place, will decide the matter there and then and also implement it and then move to other spot. It is expected that 70% of the cases which are filed in Munsif Courts or Taluks level courts are of minor nature and these minor offences and minor disputes can very well be taken care of by these mobile courts.

If this happens, than 70% of the litigation in talukas will be reduced. To that extent, there will be reduction at every higher level. That is revolutionary. That is also a concept that has got to be seriously applied and there is no reason why State Governments cannot take a lead in establishing such courts. They do not have to wait for the sanction of the Central Government.

That is as far as the distance is concerned. As far as the delays and arrears are concerned, I believe you must have been hearing for the last few years, almost every day of your life, speeches on this subject. I don't want to add to them, but I only give you one or two figures which are latest. To-day in Supreme Court, cases pending cross the limit upto two lakhs. In all the Highcourts, they are between 15 to 20 lakhs. The figure of 15 lakhs was at the end of December 1987. Now three years have passed. Now, in all, all the courts together it has reached two crores. Now these figures mean nothing to us. In fact, we have become insensitive under those aspects. The cases have been pending in courts, even criminal cases for 15 to 20 years. As I said the other day, in this very town, when the cases take

15 to 20 years to be disposed of, there is an indication that our judicial system has collapsed. But fortunately, for us, people have still faith in the only institution i.e., judiciary. They are approaching it and therefore, we say that the judicial system is working. Let us acknowledge it, that they come to court because they have nowhere else to go. But even that picture has not remained as it is today.

In some of the towns like Bombay I will say, almost all the Metropolitan towns, because of the delays and arrears, people have started losing faith in judiciary and have started resorting to extra legal measures. In fact, now there are certain organisations which have sprung up. Some of them called themselves as political organisations and others move about in the name of social organisations. They have their own regular musclemen. If you have a dispute you have to approach them in their office not in the court or advocate's office and they summon the other party and the matters are disposed of there, with the help of musclemen. Otherwise, the other party which is for resentment in their eyes will suffer punishment.

Even some of the landlords particularly the builders in some of the Metropolitan towns, are now using the musclemen to get their tenants evicted because their stakes are high. Even for recovery of monies, people go to these musclemen. These are going on and these are growing. People are not prepared to wait for years together. They do not mind sharing money with these goonda elements and there is rise of goondaism.

Corruption in judiciary is also distancing the people from the judiciary and making people losing confidence in it. It has many dimensions. It is not one dimensional aspect. I find that in the past there were some blacksheep in the legal profession who were used as go-bys or go betweens. Today, some of the judges, I say some, because there are blacksheep in every profession in every institution and these blacksheep which bring disrepute to the entire institution. Some of the judges in some States have dispensed with middle men. They themselves approach the litigants. I remember and probably you are also aware of the example of the great philosopher Judge

Francis Bacon. Atleast in those days, when Francis Bacon assumed high post even as Lord Chancellor of England, they were all honorary posts. There were no salaries. He was the philosopher. Even to-day, we quote his sayings. Remember that. He used to take money from both parties, but he was honest enough. When deciding a case against a party he would return the money. That was the fee he was charging for rendering judgement for the successful man. That is a kind of corruption no doubt.

Probably some of the judges, I am told, are following this example also. So as I said, corruption has many aspects. But the most ugly aspect of corruption is yet to be told and it is better, I don't say much on the subject. But, I am not one of those who will desist from discussing this subject as some of the judges do. In fact, this has become a reality and together with corruption, delay in disposal of cases and distancing of the people from the judicial machinery, people are the ones to lose confidence in the administration of justice. People do not realise the serious consequences of this phenomena. If the confidence in judiciary is lost, there will be no rule of law. There will be anarchy. It will be impossible for us and for our children to live and lead a civilised life. There will be no Courts, no legal profession, no Parliament or no Government. All responsible sections in the country must awake to this grim of reality and try to find out a minimum solution of the problem. They are sleeping over it. But a day will come when they will have only to thank themselves. Let us therefore awake to the need of the reality before it is too late.

Let us also remember one more thing that when we talk of legal aid, advice and another scheme, is it not necessary for us to device means which will reduce the litigation in courts, is it not possible for us to find out an alternative judicial mechanism to resolve our dispute. It is possible. In fact, some of the States have shown by their example that it is possible to do so. An institution called Lok Adalat has come into vogue in many of the States. Rajasthan and Gujarat lead in this experiment. So much so today, that even the Supreme Court held two Lok Adalats, Delhi High Court held one Lok Adalat and I understand

that Andhra Pradesh High Court also held a Lok Adalat and other High Courts have not given a lead.

But in Taluka courts and district courts in some of the States, the experiments have been made so successfully, that thousands of cases have been disposed of by holding this Lok Adalat. The machinery is very simple. Those who are willing to compromise their matters, the lawyers are called, they are asked to call their clients on the particular date when the Lok Adalat is held, there is a panel of either retired judges or senior most lawyers accompanied by social workers. Atleast a panel of three persons sit per table and hundreds of cases have been compromised and when the matters are compromised, they were reduced into writing then and there and next they were taken to the court and decrees and orders are passed in terms of the compromise in Lok Adalats. In some of the Lok Adalats in one day, about 1000 cases have been disposed of in this manner, and in Rajasthan, Lok Adalat do not sit only occasionally but periodically. In fact, they sit for days together for a month after the court hours, for two hours per day and the cases are disposed of in this manner.

So, there is a way if we are sincere and if the lawyers co-operate, if the judges co-operate, we can also reduce the burden. But, there again there is a hitch. Lawyers are unwilling to bring their cases to Lok Adalats for they fear that they will lose their fees, if the fees do not come. I would suggest to the lawyers atleast bring those cases to the Lok Adalat where you have recovered all your fees and nothing more is left to them. But better than this source, the long term solution is to evolve structure of society where there will be no conflicts and no disputes.

You will notice that 90% of our civil and criminal litigations is property oriented, is on account of the property, to gain property or to deprive somebodyelse of his property. If we evolve a structure of society where there is no surplus left with people and people are left with that much wealth that makes their living comfortable and nothing more, I believe 90% of the litigation will not see the light of the day.

But that is a long term work and it will take, I don't know, how many years and whether we will at all be there to see such a society evolving. But this is a hope.

This is only to say that the evils of litigations lie also in the structure of society, the structure of economy which we are operating. We have in our Constitution envisaged a society where none will be left with surplus property. That is an objective. Though therefore to put an end to litigation, much of the litigation we have to aim at evolution of that kind of structure of society, when there will be no need for legal aid and legal advice. Legal aid and legal advice are only a temporary palliative. It is only a temporary measure. It is meant for those poor who cannot afford the costly legal advice and costly litigation. Therefore, the long term solution is to abolish poverty, make everybody competent, economically, educationally, socially and as I said, better than that to evolve a society where there will be no disputes; at least where the disputes will be reduced to the minimum. If this is done, we will have achieved the objects of the Constitution.

Thank you friends for giving me this opportunity to address you on the subject. I hope I have not taken much of your time. Thank you.

[Special address delivered at the Bar Association, Madurai]

FREEDOM FROM INTELLECTUAL SLAVERY

Mr. Pratap Singh, Mr. Mahaboob Batcha and friends,

I must first express my apology for not reaching this place yesterday on time, for the yesterday's inaugural programme which had to be postponed till this hour. I wish I could have been present yesterday as I am told that there were good many people who had attended the inaugural session. But as they say "Better late than never" and here I am before you. Your seminar list has good many subjects, I would say too many subjects, right from Criminal Procedure Code, Evidence Act, Minimum Wages Act, the Motor Accident Compensation Act, property, Fundamental Rights, Directive Principles and so on and so forth. The seminar is supposed to continue for a fortnight and there are very many speakers who are going to address you on each of these subjects. And I take it that they are specialized in their own branch. But your Director, rather the Director of SOCO under the auspices of which the seminar and workshop are being held Mr. Mahaboob Batcha was good enough to remind me that this is the year when Dr. Ambedkar's birth centenary is being celebrated. And it would be proper, if I address also on the thoughts and deeds of Dr. Ambedkar so far as they have a varied on the subjects under discussion. But let me also remind you that this is not the year only of birth centenary of Dr. Ambedkar. This is also the year of the death centenary of Mahatma Phuley whom Dr. Ambedkar regarded as his preceptor. The only preceptor whom he had any regard was Mahatma Phuley so much so, that Dr. Ambedkar was going to write his biography and in fact he had collected almost the entire material for writing Phuley's biography but due to ill health he could not complete it, he had just comments. The doctrines of Dr. Phuley shaped the life of Dr. Ambedkar. It will be sufficient if I point out to you that Mahatma Phuley had very early in the year 1848, started the movement for liberation of all the down-trodden classes including the most vulnerable section of the society namely women. For your information it was in that year in 1848 that the first Indian to start a school for girls in a very orthodox city like Poona was Mahatma

Phuley. The year is significant because it was in this year that Marx and Engels released their Communist Manifesto and made a beginning of economic emancipation of the masses at large. And it is in this very year that Phuley and his wife Savitri Bai started or rather took corrective steps to emancipate women by starting the first ever girls school in this country in one corner of Maharashtra. Phuley also started his movement called "Satya Sodak Movement" a movement for search for truth, on the same line which was started by Justice Party and E.V.R. Periyar in this part of the country.

This movement, let us call the movement started by social revolutionaries, all of them together and it was Phuley in Maharashtra, Justice Party of Periyar and his colleagues in this part of the country. These were the movements essentially based on the rationalist thinking of men like Spencer who were very popular as rational thinkers in those times. It was a revolt against priesthood thinkers in those times. It was a revolt against exploitation through knowledge and education by section of the society of the rest of the society. The movement in the western countries was started by Martin Luther against the rule of the high priests or you may say the king of the priests, the renaissance movement as it was called in the medieval era. The same renaissance movement was started in this country by Phuley, E.V.R. Periyar, Justice Party and all the rest, let us call all of them social revolutionaries.

However there was a difference between the renaissance movement which was started by the Social Revolutionaries in this country. Martin Luther and others rose in revolt against the Pope and the princely class as representatives of the aristocrats the landed gentry. So much so, that when there was peasants revolt against the aristocrats in the west, Martin Luther became the leader of the aristocrats and put up a show as the leader the revolting co-peasants. As against this when Phuley found that in the great Indian National Congress there was no representation of the peasant class, the poor down-trodden and exploited class, when there was the formation of Indian National Congress in 1885, there was no representative of working class, he erected a statue of the farmer just in front of the pandal of

the National Congress. And he said "That in your Congress there is no class whom I represent. There are no martyrs in the Congress, Martyrs are outside and he is the symbol, that is the statue of the peasant of the downtrodden masses and as long as your Congress does not represent the masses, it is not a representative organisation of India". And he had boycotted Congress; and refused to join the Congress. And it is common knowledge that in those days the resolutions which were passed in Indian National Congress all represented the grievances of the high caste and high class. The demands, which were made, one of the demands was that the examinations for the I.C.S. should be held in India instead of in England, which was being held at that time. This was the kind of demand which were made in those days. It was not until Mahatma Gandhi came on the scene and started dominating Congress that the freedom struggle reached all the sectors of the society downwards. Till that time the freedom struggle was confined only to the local higher class or at the most higher middle class. It never percolated below. So we finally notice the difference between Martin Luther's renaissance movement in the west and the renaissance movement started by the Social Revolutionaries in this country was this, while Martin Luther and others represented the high class, the Social Revolutionaries in this country represented the lower class, the masses. This difference and the most significant difference was that the Social Revolutionaries in this country had not only to fight against the princely class but also against the higher caste and caste system. Caste system is a unique feature of this country as you know. The caste dies hard. You can change religion, but you can never change your caste.

In fact caste is mainly so much a part of our life for hundreds of years that even if you change your religion you take your caste along with you to that religion. I know among the Muslims, among the Sikhs, among the Christians there is still the caste system prevailing. And the marriages take place only among the higher castes or the lower castes who had become converted to this religion. Therefore the caste system has been a pernicious systems in our political, social

and economic life and you must understand the significance of this caste system.

I am not going to delve and dwell on this subject but two or three features which are very obvious have to be grasped, because you all belong to different social groups who are out to bring about a social change through various actions which you are initiating in the different parts of the country. You must understand the limitations in your actions. The limitations played by the caste system.

Unless you break it there is hardly any chance of a permanent or long term success to your efforts. The first thing that the caste system does is to preserve the privileges to only a microscopic minority of the society and the rest are kept out of this. The second thing which it does is, it divides the society. And particularly all the unprivileged sections of the society. Understand the significance of this. Particularly those who were out to bring about a social revolution, all progressive movements in this country have knocked against this solid rock. The entire underprivileged section which constitutes atleast 95% of the population is kept divided by this caste system because there are not only the four castes, but there are castes and their sub-castes and there are sub-castes of sub castes with the result that one social group is always anti pathetic to the other social group which is hostile to the rest of the society. So although the economic grievances are common they can never come together because the caste system sees to it that this entire exploited masses remain always divided and it is through this mechanism that so far all of the progressive movements have been started by the privileged groups who have devised the system.

You may call it a crude system and indeed it is a crude system, to see to it that the rest of the society always remains divided and never attains their social privileges. So much so that whenever they find that there are any chances of the underprivileged section coming together, they start through their various means, various schemes and projects to divide the society further. So that is working as a greatest bulwark against any progressive movement in this country. That is why we see that the progressive movements have not

succeeded in this country whether it is in the form of religion like Buddhism. In fact Buddhism was made to run away from this country till it was revived in 1956 by Dr. Ambedkar with many thousands of followers to it. That is also the fate of socialist movement. That is also the fate of the liberal movement.

The third and the most important thing which the caste system has been doing is, it has through the mechanics of monopoly of knowledge which manages to control the thought processes, the knowledge, information, the education. In fact in the very beginning only a few people will have a right to learn, will have a right to the access of knowledge. They along will be capable of reading and writing. The rest will have only to follow, what this few people say. Automatically, therefore, there has been a control over the thinking processes in the society. We always talk of thought controlling in some of the other countries and we say that there is no freedom of thinking, freedom of expression. But we fail to understand the thought controlling process in this country, which has been practiced for hundred of years, by a simple mechanism. An injunction has been issued by the princely class say "that the right to learn, the right to access of knowledge will only be confined to that few, the rest have no right to knowledge at all," it has to be followed.

So much so, that even women were for this purpose considered as 'Sudras' whether they belonged to high caste or low- caste. So, women also had no right to learn. If anybody has to learn how to control the thought process in a society, we must take a lesson from this country.

It is not necessary for us to point our finger to the other countries and say that, there is no freedom of expression, there is no freedom of thought. In fact they should learn the technique of controlling thought processes of the masses from us. And even where we find the door for educational institution has been open to the rest of the society and also to women, we find that the knowledge at the source is controlled by these gents. Because who prescribes the text books, who writes the text books, it is these gents today. And the people who have been receiving education, that means those who were up to now

deprived of this knowledge, they are receiving an education through these books, through these educational institutions which have been maintained and run by them.

And unfortunately, we have not yet grasped the correct meaning of the renaissance movement, which was started by the Social Revolutionaries in this country. The renaissance movement is not complete and in fact it can never be complete in any society. You have got to examine everything that is said, whether it is in the book or it is said in a class room or from a public platform, we have to examine what is right, what is wrong, what is good or bad through your own intellect and accept only what is useful to you, what is good for you and reject the rest. Whatever the authority of the book or what ever the authority of the man, who had said it, we must understand that who ever has said it, has said it according to the information, that he had at that time and according to his own enlightenment. He is not god or super human being that he would know everything. Even his knowledge which existed at that time he lived must be placed in the context of the knowledge, that is to come in the future. Therefore, everything that is said by anybody in any book has to be examined by every generation and accept only that which is good or useful to him and reject the rest. Our thinking process has to be continuous.

But this is what exactly we have forgotten in this country, not only by the newly educated but also by those who had a tradition of knowledge with them; not only by the new ones but also those who are occupying the high posts. The result therefore is that we still continue to be the intellectual slaves, the mental slaves of the past either of some book or some preceptors who might have had a high tradition, high name, may be a leading personality as he then was. But we forget that he had always been a human being and he had all the failing and limitation of a human being. The renaissance movement, therefore had to start. It has started. We have to continue it and unfortunately what is happening is with the spread of education we are only producing more and more intellectual and mental slaves.

In the good old days when knowledge was prohibited you only followed what others said. You did not have at least an access to

knowledge, so you didn't know even the wrong path. But today with the spread of this kind of education, an intellectual slavery, more and more people who are imbibed with the knowledge of the few, of a small section of the society, wants you to imbibe more and more intellectual slaves and mental slaves are being created, with the result that the intellectual slavery perpetuates. The whole philosophy whether it is social, economical or political philosophies are perpetuated and we are only producing more and more intellectual slaves.

Many of the ills from which our society suffer in almost all the fields today, whether it is social, economic or political whether it is a judicial field or legal field, all this can be traced to this intellectual slavery because we have refused and we are refusing to change, although our views have changed. We are wedded to a past philosophy, the past procedures, the past laws, the past ways of enacting laws, the past methods of running our institutions. We have won our political freedom. No doubt. But look at the history of the institutions in our society. Has any of our institutions changed? Society is run through the institutions. But the institutions whether it is an University, College, Schools, Courts, Legislature, Judiciary, Administration, all institutions are being run in the same manner by the same method and by the same rules and regulations. We have not changed. All that has happened is that our political masters have changed. Society has remained where it is. In fact it has inculcated the same old philosophy, we are more and more being alienated from reality. Our needs are changing but our institutions, our method of working has remained the same and there is, every day, a widening gap between reality and the solution which we are trying to find.

Therefore the first and foremost thing that we must learn from the movement which was started by social revolutionaries like Phuley, Periyar, Justice Party and Dr. Ambedkar who had allowed their thoughts and given them more concrete form in the form of their speeches, writings, deeds and the final draft the Constitution is this way. The credit goes to them for having realized well in time that the greatest enemy of the social change of social revolution in this country is the caste system. And what is needed is the renaissance in thinking, a freedom from intellectual slavery. That war of Independence, Inde-

pendence from the intellectual slavery was started by them. We have to continue. We must give them credit for having started them. But we will be failing them, if we don't continue this war of Independence for ever. It is in the light of this, the grounds of social and Political History, that we must understand, the various provisions of the Constitution.

Mr. Pratap Singh read to you the Preamble of the Constitution. What does the Preamble to the Constitution say that we must have in this country a Socialist, Secular and Democratic state. We must have social, political and economic justice. Now you must know one thing as students of constitutional history that the word "Socialism" as well as "Secularism" came into the Constitution for the first time in 1970. These words were not there in the Preamble nor were they in any other part of the Constitution. Dr. Ambedkar had to fight with the then constitutional framers for their inclusion in the main Constitution. One of them was, he was insisting, that we must state in our Constitution that our Constitution will be a socialist constitution, a constitution of a socialist country. But at that time his attempt was frustrated. The landed aristocracy, the business class, which were represented in the Constituent Assembly, they didn't allow him to do so.

He wanted a second thing. He wanted to nationalize land and he stated, there should be a provision in the constitution, that all land shall be nationalized. Even that was not accepted.

The third thing he wanted was, that the Directive Principles should form part of the fundamental rights. Even that was not allowed. But almost 20 years after his death, that dream of his has been realized.

During the emergency we amended the Constitution, that was the 42nd Amendment of this Constitution. I do not know if I spoke to you about this subject the last time. But when we are looking at Directive Principles on the occasion of his birth centenary we have to discuss what he wanted and what exactly has been realised thereafter. The 42nd amendment was introduced during the emergency. For the masses of this country this amendment has proved to be a revolution, whether it is implemented is a different thing. But let us

give credit where it is due The first thing he did was to incorporate the ideal of socialisms and secularism by incorporating it in the Preamble itself. The second thing which we did was, again to realize Dr.Ambedkar's aim indirectly. It says that if any law is enacted to implement the Directive Principles of the Constitution then notwithstanding the fact that these laws infringe upon the fundamental rights of the constitution, it will not be invalid. The law will always be held supreme. The situation before that was that, if any laws enacted, which conflicted with the fundamental rights, it was declared void and this amendment which was brought in the wake of this constitution, say there was another portion made in the constitution namely that if any Act for the implementation of the Constitution was enacted and was placed in the Schedule 'C', then it will not be challenged.

Taking advantage of this provision, a Land Ceiling Act was brought, both an urban ceiling Act as well as Agricultural land ceiling Act in and that Act which state that a family consisting of five persons, which was considered as a unit, has a right to hold property of only upto a particular ceiling. In different states according to the different ceiling of lands, the ceiling varies. But, the rest of the lands belongs to the state. So, that the dream of Dr.Ambedkar that the land should be nationalized was also realized through this mechanism. And mainly on the foundation of this amendment to the constitution, which was brought upon.

And the third thing which was realized was that, the state, the Constitution made it clear, that almost all the directive principles which were otherwise made fundamental in the governance of the country can be realized by enacting different laws and those laws, not only the land laws, but all the laws to enforce Directive Principles, would also be immune on account of Constitutional invalidity or infringed. So, Dr.Ambedkar's views, which had not been realized at the time of drafting the constitution were realized subsequently and they have their own significance. If they have not been implemented in the full spirit the defect lies with the implementing machinery. The defect also lies with the people, who are not organising themselves sufficiently to make the legislatures and the executive as well as the administra-

tive machinery to implement all these laws in full vision. So that is about the fundamental rights, the directive principles and Dr.Ambedkar's thoughts on this subjects.

The other topic, which you have is about women, and women's rights and since women formed the largest vulnerable section in the society, you must also know, what the social revolutionaries had in mind including Dr.Ambedkar as far as women were concerned. Now, in any society, and this is the world statistics, women form almost 50% of the population and in our country, in fact they are slightly higher in number about 51% or so. World statistics show that, they are about 53%. Whatever it is, they are not less than 50% whatever the strata as I said earlier, whether it is of higher strata or lower strata in their limitations, women have been the most vulnerable section of the society. There is no doubt about it. There were various reasons, I don't want to go into all those reasons, but you must know something, some broad aspects of this force, which is the 50% force of the entire human kind. The statistics show that of all the working hours, which are put in by the entire human race, 2/3 of the working hours are put in by women. Whether it is in the house or outside depending upon there strata of society, from which they come, Biologists as well as the psychologists say that biologically as well as mentally and intellectually women are as strong as men. In fact biologically a woman is a higher species than man. But, with the advent of machinery and now the electronic age, even that plus point, has become negative. Because all operation, today can be performed by intellectual power and it is now proved as I said earlier that intellectually also women are as equal, if not superior to men. The situation today in the world is that, a woman can do any work that a man can. But there is one work that man can't do which woman can, namely child bearing.

That is why you will see even in the past, in countries like India, at least some parts, we had matriarchal family, woman was the head of the family. It is possible that in course of time the woman may regain her position, not only in this country, but in the rest of the part of this planet. Beware of it, because I am not warning you, But I am only giving you, the actual position with regard to the power of women which has been neglected all over the world, more so in this country.

Therefore, when we talk of rights of women and to their property you must understand that you are not doing any charity to them. In fact, you are going to restore to them, what is their due. Today although the statistics show that 2/3 of the working hours are put in by women, they own less than 1/10 of the world property and their income is even lesser than that of men. In this country whenever we talk of women's rights, there is a section of society in almost all the religious communities and no particular religion can be singled out for that purpose, there is a hue and cry particularly among by the fundamentalist, the priestly class in every society. And the priest hood, unfortunately has all along been the religious monopoly of men. A question which is always asked is, if biologically, intellectually, mentally women are as equal, if not superior to men, why is it that women are held vulnerable in all the societies. The answer is, it is not nature which has made them vulnerable. It is the society which has made them vulnerable. And the society which is dominated by male, which has framed such rules and regulations, such taboos and Indian trends that women have always been kept in chains of bondage. So it is not the nature which has made women a vulnerable section, but the man, the society, because it is dominated by men.

The remedy therefore that is suggested is that we must acknowledge this fact that in western countries where, European law or European civil code was framed by Napoleon and was enforced, women had been given equal rights with men in property ownership. There was a commonality of property between men and woman. As soon as a woman is married or a man is married and the man and woman are wedded by law whatever is the property of woman or whatever is the property of the man, man and woman both get a share to the extent of 50%. The woman gets a share to the extent of 50% in the man's property and man gets a share to the extent of 50% in woman's property. That is called commonality of property.

We have been talking for a long time of a common civil code. Now let me enlighten you on this aspect. We have one state in this country, where there is a common civil code in operation today and that is the State of Goa, where the Portuguese law which is the European law which is in operation. Whether it is Muslim, Christian

Hindu or Sikh, all of them follow this common civil code. There is a commonality of property between man and woman. There all the succession laws are the European laws which are followed there. Not the particular Hindu law or Muslim Law or Christian Law. We have there these laws going on for the last more than 400 years. Unless of course today some fundamentalist want to enter the territory and sow the seeds of destruction this will continue. Today at this stage in this country this is the only state which follows the common civil code.

I went to China about two years ago and there I found the common civil code they followed in China and let me also enlighten you how that the procedure in the clauses in Muslim law are also followed there. There is also a clause in Muslim Law. Their population is not more than 2 lakhs in China. There is a monk who is the head of the Chinese Muslims, who narrated the incident. I was there Chief Justice P.N.Bhagwati and one another judge of Supreme Court were there. It is very interesting to know how the collapse had happened there. Whenever we talk of common civil code what I want to emphasise in your mind is this. The common civil code does not mean the civil code according to the privileges of any particular religion.

We have to protect good provision of all the religion and incorporate them in a common civil code. That is just what we have in the State of Goa. Let me give you an interpretation of this clause and how it is interpreted in China. The Imam told us that our interpretation of Quran is this, that first time a man wants to take a divorce and he says talaq then he must come to Imam or Khaji, wherever he is. Then the priest and the Khaji try for reconciliation between the two. If reconciliation is arrived at, there is no difficulty. But if there is no reconciliation then they had a second time when he says talaq again, he has to come to the Khaji. Again reconciliation starts and if it is not reconciled only then will the man go to religious court and prove his case as any other man belonging to any other religion will do. So women find that the interpretation of talaq, are also there in all the countries. In fact that kind of talaq and divorce is difficult. I would welcome it in this country for all religions because we find no protection to Muslim women under the talaq in interpretation as in China than there is a protection either to a Christian women or Hindu women

in this country. Hindu Marriage Act for example, the man has to file a petition for divorce and the woman has to file a petition for divorce and they come to the court. It is only after they come to the court, that the law says that the judge tries to reconcile the parties. And if there is no reconciliation then of course divorce will be given. But the court's interpretation of talaq in Muslim law, reconciliation is compulsorily given to those who come to the court and not once but thrice. And even after they come to the court, the reconciliation is not barred but the judge can always try to bring about the reconciliation. So they will find that there is more protection to Muslim women in China and that kind of a provision is incorporated in common civil code that we are thinking of bringing it after forty years. It should be welcome by all.

And for the same thing in some other countries, it is not correct to say that man has a right, that is Muslim man has a right to marry four women at a time. No. There is the interpretation of marriage law. Muslim marriage law or Quranic Law that one man is for example, the interpretation says that the Muslim man will have one woman only at a time, that is the interpretation, so the interpretation of even the religious scripts and texts differs from country to country. Therefore what I was trying to impress upon you was that when we are talking about protecting the rights of women, whether they are conjugal right or property rights we are trying to bring about a common civil code. Let us try to incorporate in our civil code all the good provisions from all laws concerned. It should not be understood as an injunction of particular religious group. We want these things from whatever part it comes and has taken account of. So that is about the Muslims and the rights of women to property rights of women in the matrimonial life and also right of women in custody of children and so on and so forth. And I don't want to take much of your time on that aspect.

But I thought since we are talking in terms of sensitising interests and rights of the vulnerable sections of society, the greatest vulnerable section in the most exploited section in my view is the women. We must also take note of the true facts of their social as well as domestic life. So it is the life of these women various aspects that we have to think of the subjects which are going to be discussed in your seminar.

There are two ways of dealing with our religion in so far as our legal and judicial systems are concerned. One is short term and the other is a long term. The short term one is a solution which has to be framed within the present legal frame work, the present judicial system. The long term solution will have to be found out by changing the system itself. These are the local structure of the two aspects of it and I don't want to take much of your time, but all that I would require you to do is when you are studying this structures, go to the roots of the law. Try to find out the meanings. Don't accept any provision as it is. Try to question and question. To question is necessary to meet the present needs. And it was not that the provision itself should not be in the statute book. We must educate for its change. That is the first thing. And second thing is which you find in the system itself and to use it for our sake. Having outlined the facility then you must also ask for a change of the system itself. There is nothing wrong then about the present judicial system. What I am really asking for is what will supply them with at least the minimum for supplementing the process at present that is what is wrong. Law Commissions from time to time have also recommended that in addition to the present court system, let us have alternate judicial mechanism system like Lok Adalat, the Gram Nyayalaya, the Nyaya Panchayat, the arbitration centres, the advice clinics so on and so forth. They have been tried Western countries where they give a training to create an impact. But we have our own right to take an initiative. It is your duty to claim for a change in the system, a change in the mechanism which of delivering justice. Because today all kind of our judicial systems have collapsed which indicate that even though the judicial system had collapsed, the root cause of the source had not to come down.

When you take twenty to twenty five years to dispose of a case what is the indication that the system has collapsed. And therefore, it is our duty not only to ask for changes within the present system but also replacement of the system itself. It is with this open norms that you must approach all your subjects. Don't nearly dito whatever have been placed before you, you must question everything that is placed before you. That is the way to carry on the renaissance movement which has been started by the social revolutionaries in the

past and that is the best way to pay our tribute to both Dr.Ambedkar as well as to the Preceptor Mahatma Phuley as as well as Justice Party and Periyar and all those social revolutionaries. They started for us the way to fundamental social change.

Thank you gentlemen.

[Inaugural address delivered at the 15 days para—legal training course organised by the, Indian Institute of legal studies (SOCO Trust) at Madurai on 23.5.1990]

EFFECTIVE USE OF MEDIA AND CONSUMER PROTECTION

In the first instance, I look upon this movement not merely as one of service to the consumers, but as a social Leviathan. If properly conducted, it has all the potentialities of becoming a powerful agent of social and economic change. Whether it is a free market economy, a controlled economy or a mixed economy, what is needed is the best quality product and service at the cheapest possible price. The common man is not interested in how the economy is organised. He wants adequate and timely supply of all goods and services he needs with the best possible content and in the best form, and at a cost which is within his reach. This done, he is happy to leave the structuring of the economy to the ideologues and their followers.

But whatever the economic structure, unless there is an ever-active and vigilant agency to make the operators of the economy deliver goods to the satisfaction of the masses, mere organisation of the economy on one or the other pattern will not be useful to the society. Hence, in any economic structure an instrument like the consumer movement is needed to make the economy deliver the goods effectively.

It must be remembered that whether it is agriculture or industry, the resources which are used to produce goods and services, belong to the society as a whole. Those who are for the time being in possession of these resources, hold and use them for and on behalf of the society. They are no more than the trustees of the society. They may be the owners of the resources or may be the entrepreneurs or organisers of the resources or may have been employed to operate them as managers, technocrats or labour. They all operate them not only for generating incomes and profits for themselves but for delivering goods and services to the society. Unfortunately, this primary fact that both capital and labour are the trustees of the people is always forgotten by all concerned. The society, therefore, has a stake,

even as the ultimate owner of the resources, in supervising, controlling and regulating the manner in which the resources are used and in ensuring that they are used in the most efficient manner. All members of the society are further both producers and consumers of one or the other goods and services. Of some they may be the direct users and of others, they may be the indirect users. But they are owners of all the resources. The Consumer Movement is, therefore, nothing more or less than an assertion of the right of the people both as owners of the resources as well as consumers of the goods and services produced with the the help of the resources.

In both these capacities, the people have, therefore, a right to participate also in the process of the management of the production of goods and services. The management cannot be left to the sweet will either of the capital or labour. Whether it is a capitalist economy, a socialist economy or a mixed economy, all resources belong to the public and all sectors of the economy are public. The private sector does not invest private capital. All capital belongs to the public - whether it is raised as share money or as loans, advances or subsidies from the financial institutions or Government and semi-Government institutions. Both the private and the public sector use public money. The only difference between them is that in one case the capital is managed by individuals who are not answerable to the people while in the other case it is managed by individuals who are supposed to be so answerable. As far as the society is concerned, both the sectors use and exploit its resources.

Hence the society as a consumer should insist on its right to be represented in the management of all industries whether manufacturing or service, whether in the private or the public sector. Such participation will have many beneficial effects.

The Consumer Movement as it is conducted today mainly confines itself to investigating complaints against goods and services after they are produced or rendered. But before that, the precious resources are wasted, under-utilized, over-utilized or mis-utilized, either by the capital or the labour or by both. The consumers should, therefore, have and insist on a say at the stage of their production

itself. The participation of the representatives of the consumers of the respective goods and services in the management of their production will also ensure their economic and efficient use and the best quality production, by a constant vigilant check on both capital and labour. The presence of the consumer's representatives independent of both capital and labour, but as a watchdog of the society's interests, will also act as a healthy force to minimise industrial strife, closures, lock-outs, strikes, and go-slows, the mismanagement of enterprises, internecine board-wars, the phenomenon of sick-industries and irresponsible trade-unionism. That in turn will prevent the loss of employment and production and the waste of resources. Neither the private entrepreneurs nor the public bureaucrats left to themselves are capable of achieving this result. In fact, on majority of the occasion, it is their deeds of omission and commission which contribute to many of the economic maladies.

A discipline in economic life which occupies the major portion of both individual and social life, will help bring about discipline in other branches of life. What is, therefore, needed is both a new model of economic management and new work-ethics. One without the other will not bring about the desired result. Whether it is a capitalist economy or a socialist economy, whether it is private or public sector, we need a management in which all the three interested parties, namely, the entrepreneurs, organisers or managers of the enterprise, and the labour and the concerned consumers, participate actively at all levels and in all aspects. Along with political democracy we need also economic democracy and the participation of the people at all levels of our economic administration and management. The paradox of our society is that while political power vests in the people and the political representatives are accountable to them, the economic power and its administration is in the hands of the individuals who are not accountable to them. The new labour - consumer - participatory model of economic management will go a long way in establishing economic democracy and in creating a new work culture.

I may also briefly deal with the problem of strengthening the Consumer Movement in this country. The leadership and manning of

a Movement, its organisation, and the education of the people with regard to its objects and activities are all essential requisites of any movement. More so, with regard to a Movement of this nature which is a thankless job for those who undertake it. The Movement has further to be continuous and necessarily institutionalised. It, therefore, requires resources in terms of money and manpower. Those who man it must be singularly and selflessly devoted to the cause. A movement such as this which has all the potentialities of becoming a formidable weapon in the hands of the people for controlling and regulating all kinds of economic activities, faces also the danger of being perverted into an oppressive instrument, if it is operated by individuals who have interests other than the interests of the society at heart. Hence the ever present need of being vigilant that the Movement does not slip into the hands of the unscrupulous elements.

As regards resources, apart from what the Government and voluntary agencies can contribute, we have also a vast latent resource of which few are aware. That resource which legitimately belongs to the consumers is today appropriated either by the manufacturers and traders or the Government and the semi- Government authorities. The customs and excise duties, the sales tax, the octroi and similar indirect taxes, levies and cesses which are collected by the respective authorities together run into thousands of crores of rupees and in fact are the major source of revenue for them. Day in and day out, there are cases of either wrong levy or over-levy of these imposts. The relevant statutes provide for refund of wrong or over-levies. However, the manufacturers or traders receive the refunds although they have already recovered them from the consumers. This money does not belong to the manufacturers or traders. It properly belongs to the consumers. The Supreme Court as well as almost all the High Courts in this country have taken the view that the manufacturers or traders as the case may be are not entitled to such refunds and the monies should properly go to the Consumer Welfare Fund. An estimate of the extent of the amount which is refunded every year can be had from the fact that the cases of refund which are at present pending in the Supreme Court alone involve an amount of more than

3000 crores of rupees. It is further necessary to point out that this amount represents a very small percentage of the amount which is regularly refunded to the manufactures and traders. Further this amount is only under one Act, viz., the Excise Act and only in cases which came to the court. About 95 per cent of the matters are disposed of at the level of the concerned authorities under the provisions of the relevant statutes themselves. One can, therefore, imagine the enormous amount which legitimately belongs to the consumers but is being daily misappropriated in broad day light and under the so-called legal umbrella. If this amount is credited to the Consumer Welfare Fund it will be available to the Consumer Movement in this country. The Consumer Movement should, therefore, activate itself to claim it.

As regards education, apart from the educational programmes through oral and written word and audio-visual instrumentalities that the Consumer Movements can undertake, the media - both the print and the electronic - has a vast role to play in educating the people with regard to their rights, and with regard to the duties and obligations of the producers and suppliers of the goods and services. Unfortunately, the print media in particular, is busy only in exposing the political scandals. The economic life and activities which also form the infrastructure of much of the political and social life, however, goes unnoticed either by design or accident or ignorance. The sins of omissions and commissions in our economic affairs, therefore, remain unexposed. As the structure of ownership of the print media stands today, it may not perhaps be realistic to expect from it a dispassionate education of the consumers. On the contrary, the media may sometimes mislead if the interest of the owners of the media are conflicting. Disinformation, distortion and suppression of news are not phenomena unknown to the media. We can only hope that the investigative journalism which has been the recent trait acquired particularly by the national press will also turn its search-light on the economic misdeeds of the producers and suppliers of goods and services.

The Consumer Movement eventually will also have to deal with the sinister aspects of consumerism as well. This is a problem which has to be faced squarely not only by this country but by all the countries of the world. We have been multiplying our needs and also changing our taste. In a free market economy with unplanned and uncontrolled use of resources, supply creates demand and the brands of the goods change every six months, rendering the old goods obsolete. There is so much waste of raw material and energy and particularly of non-renewable resources. The indiscriminate production of goods and services of all kinds, and an equally indiscriminate use in technology to produce them, are polluting land, air and water and are also jeopardising seriously the ecological balance of the planet. What is regrettable is that much of this production is undertaken to cater to the needs of the higher strata of the society which alone can afford comforts and luxuries and their frequently changing patterns. The bare necessities with which the vast masses have to be content have hardly any brands to choose from, nor do they change for a number of years. We are thus depleting the resources of the country and almost converting this planet into a desert to cater to the needs of the few, leaving the future generations without any worthwhile resource. We in this country who are not tired of claiming the legacy of spiritualism and of simple living, of high thinking have been aping, in this respect also, the advanced countries. Today, it appears that the higher strata of this country has come to believe in high living and low thinking or no thinking for we have been imitating others unthinkingly. I shall say no more on this subject but would like to remind that if any people are best suited to lead others in minimising the human needs and the saving the earth from a certain ruination on account of consumerism, it is we who claim spiritual legacy. The problem is of using the resources of the earth economically, and of preserving them. It has to be faced by the Consumer Movement in all the countries. The People all over the world have undoubtedly become aware of the problems posed by pollution and ecological imbalance, not of their real causes. We are concentrating on the consequences rather than dealing with the role

causes. We will not be able to fool each other for a long time. The hour of reckoning is fast arriving.

I have not touched the problems of the Consumer Movement at the micro level and can not have done so in the short time at my disposal. The suggestions which I have, made for a capital labour-consumer participatory new management model and for appropriation of the refunds of taxes and levies to a Consumer Welfare Fund may require amendment in the existing legislation and the enactment of a new legislation. These are, however, matters of seminal importance not only the Consumer Movement but also to the society as a whole. I hope and trust that they are pursued earnestly by all the interested ones.

[Valedictory speech at the seminar on 'Effective use of Media and Consumer Protection, held at India Centre, New Delhi on 25-4-1990]

WOMEN AND CONSUMER MOVEMENT

Let me at the outset thank the organisers of the Workshop for giving me this opportunity to be amidst you this morning and have a dialogue with you - which is what I am going to do, in the next few minutes.

The object of this workshop is to equip the consumer protection activists with the requisite information with regard to the various aspects of the consumer movement. I am happy - and I must congratulate the organisers of the workshop for it - that the workshop is organised exclusively for the women-activists in the movement. There are many fields of our social activities which can be served **better and more meritoriously** by the ladies and are better left to them. The Consumer Protection Movement is one such activity. Women are better suited to take the leadership in this movement for various reasons. First, they can devote themselves to it with unflagging interest without which it will neither gain the necessary continuity and strength nor will it be successful. Secondly, it is women who are intimately associated with at least 90% of the products and services and know their worth, qualities and comparative merits. For the same reason, it is the women who are essentially required to be educated on the subject more and it is women activists who can educate other women better than men. This does not mean that men have no role to play or that their assistance cannot be had to further the Movement. But women have to take the lead. In this connection, let me remind you of what is happening in the Western countries - in all social movements today, it is the women who are in the forefront - whether it is antiwar, anti-nuclear armament, anti-pollution, environment, or consumer movement, - it is women who are leading it with single minded devotion and continuity. These movements are not sporadic - they are well organised and have become inseparable part of the social life there.

It is first necessary to comprehend the dimensions of this movement and its larger perspective to understand the importance, the significance and the scope of the task that the activists in this movement are called upon to undertake.

- i] The movement is not against anybody. We are all consumers of some goods and services depending on our needs, and those of us who are gainfully occupied are also producers of some goods and services, directly or indirectly. Just as we have a right to bring action against others for defective goods and services produced and supplied by them, others have an equal right to bring action against us for the goods and services produced and supplied by us. The manufacturer of car is a consumer of all other products and services. So also the doctor, the lawyer, the architect and so on. Everybody, whether peon or president, employee or employer, farmer or factory worker, policeman or doctor, **is a beneficiary of the movement and at the same time everybody**, if he is not careful, is also a potential defendant in the action that may be brought by others. One may be directly or indirectly responsible for the defect as a part of the organisation which produces goods or services. Just as, therefore, the Consumer Movement should make everybody conscious of his rights, it should also make everybody conscious of his obligations and liabilities, and instill in him a sense of responsibility. The Consumer Movement, therefore, can also create and promote an ideal work-culture if the Movement is developed on healthy lines - the work-culture which is very much lacking and wanted. That will be the most important gain of this Movement.
- ii] The second important consequence of the Movement is-it leads to effective economic democracy by ensuring accountability.

In a free-market economy, consumer is supposed to be the king and calling the tune. But everyone knows that it is a half truth. The free-market economy leads to cartels and monopolies, takeovers and the entries of multi-nationals and, ultimately to the capture of the market by a few. It thus becomes a supplier's market and does not remain the purchaser's market. Common man has hardly any say in such market. He has to purchase what is offered to him. He is helpless.

It is for this reason that the legislation steps in to protect the consumer. But mere legislation is not enough. Legislation creates only paper-rights and remedies. Unless they are enforced, the rights and remedies do not become real. To enable the common man to enforce them, he has first to be made aware of them by educating him. A mere awareness is also not enough. He must have an access to the machinery which enforces the rights. The awareness of the rights and an unhampered access to the machinery which enforces the rights, are two fronts on which the Consumer Movement has to work. Before we examine the situation on the two fronts, let us understand what the larger goal we desire to achieve by this awareness and access to the requisite forum.

Common man has become an automaton in the whirlpool of the economic activity. As a citizen, he should be the centre of all activity, and shape things. However, it is he who is shaped by the events which he cannot control. In the form of the Consumer Movement, he has got a weapon for the first time in his hands, to shape things and dominate the scene. It is a tremendous power, and if used constructively can verily bring about a silent revolution - the economic democracy.

Whether it is a free-market economy, controlled economy or a socialist economy, there is no economic democracy. The common man does not have a say in the activity of production and distribution. It is the industrialists, the businessmen or the bureaucrats who control the industries. What is necessary is to make **them accountable** to the people. Consumer Movement is an effective instrument to ensure this accountability - by controlling the quality, the price, the safety, the technology, the efficiency and by ensuring enough quantity through proper distribution, by protecting ecology and environment and by prohibiting waste, by prohibiting production of dangerous goods and services, and by prohibiting the use of dangerous technology and by prohibiting even lock-outs and strikes. In short, the consumer can truly be made the king. In the economic life, the Consumer Movement can ensure and enforce the Rule of Law - where today there exist the Rule of Thumb - the Rule of self-interest.

What gives the consumer this right to rule?

Over the period, consumer has come to acquire certain rights - through legislation and judicial decisions and today, it is acknowledged that the consumer has several rights - [i] right to quality goods, [ii] right to fair price, [iii] right to fair distribution, [iv] right to safety, [v] right to choose, [vi] right to truthful advertising [vii] right to informative labelling and packaging [viii] right to fair contracts [ix] right to object, to return goods and to refuse services [x] right to claim damages. Each one of these rights, is a formidable weapon in the hands of the consumer and if properly used can make him the king in reality. However, to ensure real economic democracy for the common man, to these rights has to be added the right to representation in the management of the industries and businesses. A time has come for the Consumer Management to focus its attention on this right as well. What is this right? To understand it, you must know the reality of the modern economic life.

Today no industrialist or business man uses his own money for running the industry or business. The money belongs to the public. Either it is a loan from the banks or a deposit from the member of the public, or is the share money. The public undertakings of course, use public funds. Thus the industries and business houses, whether public or private are run with public money. The public has, therefore, a say in their running. Hence the consumers of the respective products and services have a right to ask for representation in the management of the industries and businesses concerned. The modalities of securing the representation of is a matter of details. If and when such a representation is secured, it will help the society in two ways. Firstly, the quality of product and its proper price can be ensured before it is marketed. Today the remedy available to the consumer is at the post-sale stage. It is only when the product is bought and used by him that the consumer becomes aware of its defect. Secondly, the consumers representative can check and control waste of resources and inefficiency in the working of the establishment, and the management and the employees - the cost of all of which goes into the pricing of the products. But this is a long cry today.

However, let us remember that the rights which the consumers have acquired today were also a long cry some years ago. It is only a constant pursuit and agitation for the rights which makes them a reality one day. We have, therefore, to pursue the right to representation also with grit and determination to make it a reality as early as possible.

It is not necessary for me to discuss in details, the other rights of the consumers. They have been incorporated in the Consumer Protection Act which also incorporates the right to consumer education.

However, it is necessary to remove certain misunderstandings. The first common misunderstanding is that the Consumer Protection Act is the only Act which protects the consumers. That is not so. There are various Acts - like Indian Penal Code, Sale of Goods Act, Drugs Control Act, Weights and Measures Act, Essential Commodities Act, M.R.T.P. Act, Specific Relief Act, Hire Purchase Act, Trade and Merchandise Marks Act, Cigarettes (Regulation of Production, Supply and Distribution) Act, Narcotic Drugs Act, and so on.

All that has happened on account of the Consumer Protection Act is that the rights and remedies against the manufacturers and suppliers of all goods and services have been brought under one umbrella. Now the consumer has not to proceed under different Acts. He can proceed under this Act alone. Secondly, the right can be enforced in one forum. Lastly, the remedy is cheap and expeditious.

What is further necessary to remember is that the consumer had rights even before the Consumer Protection Act. However, they could be enforced either through Civil Courts or the special fora created by the special statutes. And even today, the consumer if he so chooses can avail of those rights and remedies under those Acts. The most important thing to remember is that those goods/services - if there are any - which may not have been covered by the Consumer Protection Act - are not immune from action. A consumer can proceed against the manufacturer and supplier of those goods and services in the Civil Court.



The consumers have not yet become sufficiently aware of their very important right, viz., the right to get back the taxes which are wrongly levied by the Governments or the local authorities and are recovered from them by the manufacturers and traders. The Sales Tax, the Customs and Excise duties, the octroi, the market cesses etc. Which are in the nature of indirect taxes are today recovered by the manufacturers/traders from the consumers. Thereafter, the same manufacturers/traders recover them from the Government and also pocket them themselves.

This is a loot of public money - a day-light robbery. It is euphemistically called 'unjust enrichment'. By this process, every year, thousands of crores of rupees are pocketed by the businessmen. It is surprising that everybody was turning a blind eye to this process for a long time. Fortunately, the Supreme Court stepped in 1970s/80s and judicially held such refunds illegal. After a great deal of agitation and persuasion by some public spirited men and women, the Central Government introduced amendment to the Central Excise Act. The money wrongly recovered is now directed to be paid into the Fund. Today in some cases, which are pending in the Supreme Court, about Rs. 1500 crores belonging to the consumers are involved.

In other countries, there is no provision for refund of the taxes wrongly recovered. The taxes and duties wrongly recovered belong to the consumers and the consumers should insist that it is spent for redressal of their grievances. What is more, the consumer bodies should file complaints/writ petitions for recovery of the amounts and also intervene in matters where manufacturers/traders file proceedings for the refund of the said amounts to them.

The Consumer Movement has to work on two points - making people aware of their rights and making the machinery to enforce the rights accessible to them.

For creating awareness, various programmes can be planned. In addition to lectures, the audio-visual programmes and practical demonstrations, booklets written in simple non-technical layman's language will go a long way to educate the people. The street-plays

with appropriate themes will also prove a powerful medium to carry the message to the people.

It is however, necessary that the medium of education should change according to the people who are sought to be educated. A uniform method will not help. For example, to the uneducated, the approach through written literature will be useless. For them, the audio-visual programmes will be more effective.

Secondly, it is necessary that the activists form themselves into different groups and specialise with respect to particular categories of goods and services. It is not possible for an individual activist to be equipped with all information in respect of all goods and services. Let me remind you in this connection that, a good deal of research is necessary in connection with the quality and pricing of each goods and service. Without a mastery over at least the minimum facts, it will not be possible to bring a successful action in the Court or in the consumer forum.

Besides, some groups may have to specialise on the various aspects of law and judicial decisions to advise the consumers of the nature of the complaint that they may file with regard to a particular goods or service and the relief that they may claim, the evidence that has to be produced and so on. The group may also have to study the legality of the taxes imposed, their correct rates, the modalities to claim refund of the wrongly imposed taxes etc.

On the subject of pricing again, the cost accountancy, the proportion of inputs, their market condition, the demand for the product, the cheapest method of conveying the goods or offering services etc. are some of the problems which may have also to be studied in depth.

The consumer forum has also to undertake research to find out the alternative technology for producing the same goods and services or substitutes at cheaper rates, without pollution and ecological imbalance and without waste and hazards. At the same time, the Consumer Movement has to find out which products and services are dangerous for consumption and hazardous to human safety. That

also requires a through study including that of the bans and the prohibitions imposed on such goods and services in other countries, the reasons for the same and all the literature available on the subject.

The subject is vast and many dimensional, and hence, specialised teams of activists will be necessary.

During the course of your workshop, you are going to discuss some of these aspects in detail. Please keep these suggestions in mind when you do so. I wish your workshop every success.

[Inaugural address delivered at the Consumer Forum on the occasion of the workshop for women activists at New Delhi on 17.10.1992]

HUMAN RIGHTS AND DIGNITY

To ensure human dignity to every individual must be the aim of every civilized society. Human dignity cannot be assured unless all individuals are guaranteed their civil and political rights as well as social, economic and cultural rights. Without these rights, no individual can develop himself to his full potentiality and participate effectively in the affairs of the society in which he lives. To ensure full and uninhibited participation of every individual in the affairs of the society, it is also necessary to ensure that there are no obstructions from or domination by others. Hence inequalities which lead to the surplus means in the hands of some with the help of which they dominate the rest, have also to be abolished. Human dignity thus cannot be secured unless conditions which contribute to personal growth are made available and those which obstruct and inhibit that growth are eliminated. What is true of the individual is true of the social groups and collectivities including nations. The social groups and nations must also have equal facilities to advance according to their choice uninhibited by the dominance and dictates of the other groups and nations so long as they do not infringe upon the legitimate rights of others.

It is only a rational social structure with planned utilization of resources and equitable distribution, and planned population and man-power which can assure to every one all human rights, and prevent social inequalities. The root cause of the denial of the human rights and of inequalities, lies in the irrational foundation of the social structure. What is true of the social structure in a country is also true of the economic order in the international community.

Nations are not planned. They owe their emergence to several factors. To meet some of the needs of their population, their geological resources may be deficient. In such cases, a mere organization of social structure on rational basis may not enable a nation to satisfy all the basic human rights of all its citizens. The dependence on other nations therefore becomes a necessity. Such dependence also becomes imperative when in spite of the abundance of resources, the technology for their exploitation is unknown, and to get it, the nation

has to look to the other nations. This only emphasises the need for a new international order based on cooperation and a give and take as equal partners and on equal terms, thus marching towards the collective welfare of all. Whether, therefore, it is an individual nation-society or the world society, a new social and economic order is a must for ensuring human rights to every individual for ensuring his full growth. Otherwise, we will continue to witness the present phenomenon where no less than 500 million people starve everyday, yet millions of tons of foodgrains are destroyed and more production is prohibited to maintain the price line, and billions of dollars are spent for the production of lethal weapons.

Whenever therefore we think of securing human rights to those who are deprived of them, we have to begin with the examination of our social structure as well as of the international economic order. If it is incapable of delivering the basic rights to everyone, it has to be discarded and replaced by a new one. Unless we are prepared to go that far, I am afraid all our talk of human rights will look superficial - at least not serious. And there is no reason why we cannot go that far.

Human rights are not absolute. They vary from time to time and from clime to clime. Their content also varies depending upon the economic development, and the structure and the goal of the society. When we say that human rights are necessary for full and uninhibited growth of the human personality, the first question that naturally crops up is, growth for what purpose? Is it to allow the individual an unrestricted freedom or to enable him to contribute to the good of the society? In any case, the freedom is not for encroaching upon the rights of others. It means freedom to be left alone so long as the free-movement does not obstruct or destroy others equal rights to grow and develop. This enquiry has become pertinent because in the kind of irrational structure of society that we live, some have acquired rights which are more than necessary for their legitimate growth, and they are using them to deny the legitimate rights of others. We are also permitting them to acquire such rights uninhibitedly. This phe-

nomenon is no less responsible for denial of the human rights to others, in many different ways.

The allied but equally important question that springs up in this connection is - how do we measure the value of the content of a human right? Take the right to food. Is its content to be measured in terms of the food's quality to nourish, strengthen and lengthen the human life or on the basis of its richness? Similar question can be asked with reference to other basic rights-right to clothing, to shelter etc. There is no doubt, the contents of these rights cannot be the same in tropical and cold countries. But the ceiling on the contents can be defined in uniform term, viz., comfortable living. Anything over and above it has to be considered as surplus. It has become necessary to stress this obvious aspect today because the multiplication of our needs and the frequency of their change, and the production of goods and services to satisfy them are equally responsible for the denial of the human rights to others.

The multiplication of the numbers and of the need is not only responsible for the denial of the human rights to many, but is also responsible for the imminent threat of destruction of this planet. Today it is not only a question of securing human rights to the deprived. It is also a question of the survival of the planet itself, and of the human race and of the entire flora and fauna. It is a question of saving the human rights of all of us. Fortunately, though late, the mankind awakened to this need of the hour, and its representatives assembled at Rio this year.

The phenomenon of the multiplication of the needs is also due to the irrational economic order both at the national and the international level. Production for profit by whatever means is the creed of the day. Therefore the supply of goods, however, superficial and needless and however dangerous and produced with whatever dangerous technology, is the order of the day. It creates its corresponding demand. Hence the environment and ecological problems threatening the future of the entire humanity are no less due to the present unbridled economic activity. The solution therefore lies in striking at the root - replacing the present order by a new human order.

We have in this country as well as at the international level, organizations working on different human rights fronts- from the rights of the prisoners and the prostitutes to those of the disabled and the destitutes . I have all respect for these organizations and for the causes for which they are fighting. Unfortunately, however, we forget that no human right can be examined in isolation.

Unless we take a holistic view of all human rights together, it will not be possible to find solution to secure any of them. On the other hand, notwithstanding our valiant efforts, as the time passes, those deprived of these rights will multiply and the quality of the rights available to them as well as to all of us, will deteriorate still further. I would, therefore, take this opportunity to appeal to all the activists on the different human-rights front, that they devote at least a part of their time and energy to find out the basic causes of the problems they are busy solving. Why do we have the prisoners and the prostitutes, the disabled and the destitutes? Is it not the social and economic order which breeds them? Shall we not, therefore, change the order? These are the questions which need to be asked and answered.

If the Human Rights Commission which the Government of India proposes to set up is going to work on the same lines as these organizations, then I must admit, I do not expect it to produce any tangible results. If it has to produce concrete results, it cannot avoid raising these question and answering them. Unless it does so, it will at best end in becoming Amnesty National in place of International. This is not to belittle the work that organization is doing. This is only to emphasize that the object of such Commission should not be to be a national counterpart of that organization. It should seek to tackle problems at deeper levels.

It is necessary for any such Commission to identify the areas and sectors where the basic rights are denied and trampled upon, and to trace the root causes thereof in order to remove them. When it undertakes such work it should do so in the spirit of educating, aiding, assisting and correcting the other institutions including the executive. It need not necessarily have to work in opposition to them.

The work of any Human Rights organisation in this country has to proceed along different lines from that of similar organisations in the other countries, particularly at this juncture of the history of this planet and of the mankind. Man is reducing this planet to a desert. Although, today, the danger of the extinction of mankind on account of the nuclear holocaust has receded, its slow annihilation through ecological imbalance, environmental pollution, dangerous products, dreadful diseases, destruction of non-renewable resources, greenhouse effect, ozone hole and acid rain, nuclear waste and fall out, starvation and pestilence, persists and will continue to persist, unless we call a halt to breeding and consumerism. It is here that this country has not only to take initiative but give a lead to the rest of the world. Unfortunately, instead of leading others, we are allowing ourselves to be led by the nose. To-day, any talk on these lines may sound romantic. But humanity has no alternative.

First and foremost, we must initiate a compulsory family planning programme and halt the population growth. No one has a right to bring in to this world an additional mouth, when it is going to deprive others of their basic needs. It is no longer an individual choice. It is a social responsibility. The Human Rights organisation has to place on its agenda, the problem of tackling the growth of the population, as a priority item.

Equally important is the problem of calling a halt to consumerism. Along with the multiplication of number, the multiplication of needs is responsible for the depletion of the resources of this planet and denial of basic rights to many. Minimum and simple needs must be our motto, if we have to conserve our resources and assure everyone of his basic human needs. Otherwise, a sizeable population will always remain deprived of them.

In terms of the so-called material prosperity measured in terms of the quantity and quality of goods and services consumed, we may belong to the Third World. However, we have a legacy of spiritualism and of simple living and high thinking which belongs to the Super World. A time has come to hark back to that ancient way of living, not only for us but for the entire humanity. We have to give the lead to

others in practising this creed. Mahatama Gandhi, who foresaw the danger of materialism and preached and practised this creed, is becoming more and more relevant with the passage of time. Let us call a halt to our madness and stop imitating the materialist world. Let us revive our old values and way of life. The contents of human rights and the prosperity of the society are not to be measured in terms of the gross national product. They are to be measured in terms of gross national happiness. Let us give a new meaning and a new content to human rights.

Ignorance is the primary enemy of mankind, and is the basic social disease. It is also at the root of poverty and diseases. The whole of mankind was once poor when it was ignorant of the technique of exploiting the nature for its comfortable living and happiness.

Hence functional education to train the deprived sections in the art of utilising their talents to follow different occupations, and to make a living thereby must become the first plank of the programme of any Human Rights organisation. Simultaneously, the organisation should turn its attention to the wherewithals of creating occupational opportunities. That will ensure gainful occupation to all and eliminate the root cause of much violence and crime in the society.

Women's education should engage our attention next. It is through their education that we can successfully tackle the problems of population growth, health, cleanliness and sanitation, addiction to drugs and liquor, superstitions and blind-faith, violence against women, sati, dowry deaths, female infanticide and prostitution. Above all, women's education and their emancipation will have a sobering and restraining effect on overall national life, directly and indirectly, reducing tensions, conflicts and atrocities and Man's cruelties to Man.

These are some of the most important programmes which any Human Rights organisation must undertake on an urgent footing, if it has to succeed in tackling the problem of denial and suppression of human rights to the deprived and disadvantaged sections of the society.

Man's greed, selfishness and viciousness is at the root of the denial of human rights to others. When he is helped in those

weaknesses by the social structure, his arbitrariness in dealing with others knows no bounds. Arbitrariness is the antithesis of the rule of law. Unless, therefore, societal affairs are arranged on lines which will curb and control the weaknesses and the arbitrariness, the provisions of law, however exemplary and laudable and whether contained in the Constitution or elsewhere, will not be enough to guarantee human rights to the deprived.

[Presidential address delivered at the third sessions of All India Jurists seminar on 'National Commission on Human Rights - Structure, Status and scope' on 5.12.1992 at New Delhi.]

UNIVERSAL HARMONY - NEED OF THE TIME

The harmony or disharmony in an individual's life depends upon his attitude, approach and response to animate and inanimate objects present, and the events occurring around him. His reactions to them in turn depend upon his mental health which also owes its state to his physical health.

The physical well-being of the individual depends, among others, upon the satisfaction of his basic needs. The mental well-being is attained by training and controlling mind, occupying it usefully in constructive work of one's choice, utilising leisure in invigorating pursuits and generally, in being at peace with oneself.

Physical well-being contributes to mental health but cannot ensure it. Though, mental well-being cannot co-exist with physical distress, mental disturbance and even disease can afflict a physically healthy being. To ensure harmony in individual-life, therefore, it is necessary to provide conditions which will promote both physical and mental well-being.

With widespread ignorance, poverty, disease, hunger, unemployment, slums and ghettos, physical and mental health are a far cry, for a vast section of the mankind. Peace within is as remote to them as the stars in the firmament. With a considerable section of the populace being thus in a constant disharmony with itself, peace and fraternity will always remain an elusive goal for humanity. To build harmony, Man will have first to address himself to the task of providing every individual with basic necessities.

But Man does not live on bread alone. He has intellect and mind. He aspires and despairs. He loves and hates. He prides himself and despises others. He creates and destroys. Once his physical needs are satisfied, his brain and heart yearn for the higher things - the needs of intellect, of mind and of soul. Thoughts and feelings, urges and inspirations, hopes, ambitions and aspirations distinguish Man from the lower creations. They constitute the force which can create as well as destroy, unite as well as divide, work for good as well as

for evil, make progress as well as regress. It is, therefore, necessary to control the mind and the intellect, and channelise it in constructive activities devoted to peace, fraternity and happiness of all.

The intellect and mind can be controlled, regulated and channelised through precepts and practice. Education, religious precepts, political creeds and social mores try to do it and have tried to do it in their own way in the past. Depending, however, on their nature and the forces which control them, they have been a boon or a bane to mankind. Besides, they act only as an external pressure. Once the pressure becomes weak, or loosens its hold, for whatever reason, the suppressed destructive forces, burst out and try to cater to base animal instincts which are not eliminated but only held in check by them, and which always remain a part of the nature of man. The problem is of conquering them, if they cannot be eliminated altogether. The only effective technique known for their conquest is meditation and Yoga. Once Man gains peace within himself, it has its benevolent effects on his attitude towards men and matters around. He tends to be in peace and harmony with all objects he comes across. He abhors even the slightest conflict, and strives to resolve it through cooperation and conciliation, tolerance and understanding, self-restraint and self-discipline. Hence every method and means developed and employed to ensure peace within Man himself, has to be welcomed as the primary and the surest foundation of the harmonious relations between Man and man and between Man and the nature around him. The need for evolution and spread of such techniques is both eternal and universal. Man must concentrate his efforts on this task once his basic needs are satiated.

Right from the day of the evolution of the homosapiens, from the stone age to the space age, the history of Man is cluttered with violence with his own species. The causes of conflict have been varied. Economic interests, the colour of the skin, differences in language and culture, the difference in religion, political and economic creeds, lust and greed for territory and for pelf and power, pride and prejudice, superiority complex, ambition and sometimes a sheer sadistic pleasure in killing, have all been responsible for the horrendous violence through the ages. Whatever the sophistry employed in

articulating the reasons, the basic reason for Man's violence against man, have always been one or the other of the above. In spite of the passage of time, the spread of education, increasing knowledge, constant communication with each other, progress in international trade, commerce and the growing dependence of countries upon each other, the incidence of violence instead of abating is increasing every day. Progressively it is taking more toll and by more sophisticated weapons. A sizeable portion of Man's resources is being spent on the manufacture of the weapons of destruction which threaten not only the extinction of Man but also of the Mother Earth.

Why has Man landed himself in this state? What happened to all our education, philosophies, religious and political creeds? Did they not preach oneness of Man, compassion for others, self-restraint and tolerance, abhorrence of violence, virtues of cooperation? Could they not spread the message of love and brotherhood, of peace and harmony? Or did the preaching prove ineffective? Or have the faithfuls betrayed them and for what purpose?

There are many commonalities between Man and Man. All have identical limbs and an equal number of them; their hair, flesh, veins, bones and blood are made of the same material; they all have one brain and equally potent intelligence; they come into this world through the same process of birth; they have the same feelings and emotions, the same hopes and aspirations, the same pains and pleasures, the same reactions to the same situations. As homosapiens they have the same origin, they inherit the same legacy of the human civilization and share the same achievements. They are subject to the same perils from within and without. Should, therefore, geography and habitation, the colour of the skin, the facial features, the language, the customs and practices and the religious and political creeds make so much difference as to thirst for each other's blood? Are these differences inherently responsible for the conflict between Man and Man? If not, what causes the stress and strain in human relationships within and without the nation?

Greed, lust, anger, envy and jealousy, pride and prejudice, selfishness and indifference, have been the common enemies of

Man, whether he belongs to one nation or social group, or the other. These are animal passions. From times immemorial, they they have been sought to be curbed, and their consequences checked, by a central authority, or education, or religious precept, or all the three together. To the extent, they discharged their role impartially keeping the interests of the entire humanity in view, they succeeded in curbing them. However, when they or their practitioners adopted and sought to perpetuate selfish and sectarian interests, they failed. The failure of humanity to forge harmonious relations and the upsurge in strife and violence is entirely due to the lack of altruistic approach while exercising power, in imparting education and in propounding religious and political creeds.

The solution is obvious. An altruistic central authority, a humanitarian education, a universal religion and an equitable economic and social order can alone take us towards the goal of harmony between Man and Man. Although, however, the solution is obvious, it is by no means easy to apply it. Ego, selfishness and greed, and a want of compassion for others, have been a bane of humanity throughout. Sometimes, they have taken the form of sectarian economic and political dogma and at times, of sectarian social and religious creeds. Casteism, racism, fascism, political and economic colonisation and imperialism are its incarnations in various forms. With these forces at work, it is not easy to operate an egalitarian social order, to humanise education or to spread an altruistic religious, political or economic creed. With their commanding position, the exclusive beneficiaries of the existing order obstruct at every stage the evolution of such national and international social order, under various pretensions.

Will a common threat of extinction persuade the vested interests to loosen their hold on the springs of power and to cooperate in evolving a New Order? The efforts made so far to evolve national and international organisations, do show an awareness of their need on the part of many. However, even these organisations did not remain free from the play of the same sectarian forces, with the result that nations have disintegrated and international organisations have proved either ineffective in moments of crisis or helpless before the

machinations of the mighty. It is the weak which have always been at the receiving end. The history of these institutions have taught us that without the necessary force to punish the infractions of the defined rights of the member social groups, they cannot ensure either peace or even the minimum of just order. The evolution of the European Economic Community has been the only glimmer of hope for mankind in the present times. The organization of such entities in the rest of the world would be a constructive step towards the evolution of the era of universal harmony.

Peace and harmony do not mean only an absence of conflict and conflicting interests. They primarily mean mutual trust and respect, and active cooperation and accommodation which cannot exist without the sense of oneness and brotherhood. To instil them, it is necessary to educate human mind in the common origin, the common heritage, the common goal and the common concerns and threats. Education on these lines has to start from the childhood, for it is truly said that child is the father of the man. The likes and dislikes, the tastes and distastes and prejudices and biases formed in the formative stage of the man control, consciously and unconsciously, his attitude, his views and his convictions. If the educational process is supplemented by religious and political creeds preaching humanism and universal brotherhood, it would not be difficult to achieve the much needed harmony in human relationships. But if this is to be achieved, the entrenched interests in the present exclusivism, have to be isolated. Else, neither education nor religion nor political creed can be harnessed for spreading the message of universal brotherhood.

The universal harmony has yet another and equally basic dimension - man's relations with the Nature, with the flora and fauna, with the air, water, soil and the sub-soil around and below, and with the stratosphere above. Man has over the years forgotten that he is the product of the mother earth and is nourished by her alone, and that his origin and evolution have not been in isolation or independently of the earth. He lives on the primary products of the earth, and were it not for the nature, he will be extinct. The civilisation, and particularly, the industrialisation has alienated Man from the Nature to an extent

where he has forgotten and keeps forgetting his irredeemable debt to it, and of the myriad ways in which it sustains him. He forgets that it is only by cooperating with it and not by destroying it that he can survive. He is duty bound to restore what he has taken from it. Else he has no right to take it unless it is absolutely necessary for his sustenance. For survival and nothing more, shall he use the nature. That is the golden rule followed by all non-human creatures. But Man in his avarice destroys them as well.

The universe is a self-contained, self-propelled and self-sustaining comprehensive and a complete scheme by itself. Every part of it is dependent upon another for its survival. The destruction of one, automatically leads to the destruction of the other, and a chain cycle of destructive reaction sets in motion, leading to ecological imbalance and total destruction of all flora and fauna, including the human race. If science and technology have given us tools to exploit the nature in an easier and better manner, they have also revealed to us the laws of nature, by unraveling its mysteries. These laws unmistakably establish the intradependence of every species of flora and fauna including the homosapiens upon each other and the absolute need to maintain the balance in nature.

But in our avarice for sense enjoyments, we have been increasing our needs and numbers, and to satisfy their demands, exploiting the Mother Nature by inventing more and more drastic tools. We are thus using science only for exploiting Nature, forgetting at the same time the laws of nature it has taught us and the warnings it has given us, the disobedience of which, is sure to ruin us along with the Nature. The Man has already reached a stage, one step ahead of which, is bound to bring about the doomsday. The pollution of air, water and soil, the erosion and destruction of soil, forests and non-renewable resources of the planet including oil and minerals; the reduction of water table, the greenhouse effect, the destruction of ozone layer, the acid rains and the destruction of essential species of flora and fauna are all due to the reckless exploitation of nature on the one hand to satisfy the sophisticated needs of a small section of the population who have fallen a prey to mindless consumerism and on the other, to

meet the basic needs of the senselessly ever growing population. The dangerous products and the dangerous technology with which the goods and services are produced are also contributing to the pollution and the ecological imbalance. Quick and maximum profits for the few has become the motto of the business world. Gross national product and not gross national happiness are the yardstick of economic progress. The standard of life is measured by the quantum of goods and services consumed and not in terms of the happiness of the individual. Hence the present environmental problems are only to be expected.

While defining the relationship of Man with the Nature, therefore, it becomes inevitable to enquire into the ultimate purpose of Man's life on this planet. Is it to eat, drink and be merry? Even if it is so, unless the consumption and merriment are kept within bounds, the stage is bound to reach when it will no longer be possible to satiate even the basic needs. The multiplication of needs and the production of variety of goods services in increasing number to satisfy them, accompanied by the multiplication of those who need them, are bound to take this planet to its exhausting point at some stage. By all evidence that stage threatens to be too near. It is, therefore, essential even for epicureans to bridle their senseless, self-destructive pursuit of sense-pleasures, comforts and luxuries.

Can mankind rely on Man to control his sense-pursuits? Should it be left to his good-sense alone while the whole human race fast approaches the brink of its disaster and destruction? Is there no other and higher purpose of human life the pursuit of which will ensure bliss and happiness for mankind while at the same time saving this planet, the Mother Nature' and the human race, from destruction?

Fortunately for humanity, this country has much to contribute in this sphere. In the ancient days, we have preached and practised the philosophy of simple living and high thinking. Minimisation of needs and pursuit of higher and finer instincts was the motto of our life. Man's basic needs can be satisfied by the primary products of nature. These products have not even to be processed except by Men's hands and simple tools.

That was our ancient way of life. We gave it up for false world of materialism and fell into the trap of consumerism and sense-pleasures. Instead of giving to the world, this precious mode of living life, we purchased from them materialism. The sensible section of the western society has already seen through the futility of consumerism, and is now in search of a way out. However, unfortunately, at this very hour, we have abandoned our ancient way of life and have opted for the western style of life and also for its mode of organisation of the economic affairs. That is one of the greatest tragedies of mankind.

Shall we see the light ourselves and show it to others? Will some of us have the courage to swim against the current? We need not one, but many Messiahs to do it. But we must have them. There is no other way to save Man from himself and from the consequences of his stupid and irrational behaviour. There is no other path towards Universal Harmony.

ROLE OF JURISTS IN ESTABLISHING UNIVERSAL HARMONY

The mankind today faces twin problems - the problem of co-existence of Man with Man and that of the co-existence of Man with Nature. Both problems are of his own making and their solutions also lie with him. What is needed is sagacity on his part. But that virtue is singularly lacking in him, particularly, when it is most needed. It was Aristotle who called man a rational animal. The history of the human race so far has proved him wrong and what is happening around proves him wrong every day. We are driven to say today that if there exists any irrational creature on this planet, it is Man.

How else can we account for the senseless killing of man by man in the games organised for sheer sadistic pleasures, the massacre of innocent men, women and children in organised wars and in the name of political creeds and religious fundamentalism, the manufacture of deadly weapons, the use of which will annihilate the entire human race and the nature, the production of dangerous goods and the employment of dangerous technology which puts at stake, the human life and the entire flora and fauna? How else can we explain the irrational organisation of our economic affairs where millions starve every day while millions of tons of foodgrains and food products are either burnt or dumped in the seas, to maintain the price line, and 1/3rd of the resources are diverted to the production of weapons? How do we explain the senseless breeding when the begetters themselves are in want of the basic necessities?

The lower animals hurt others only if they are hurt or do not get their share of food. They mate only seasonally and not senselessly, day in and day out. They co-exist with Nature and do not bite the hand that feeds them. Why should man call himself a higher animal? Who out of the two is rational? Rationality does not lie in the mere capacity to think. It lies in the capacity to think rightly, to think constructively and not destructively, to think in terms of long term interests and not only in terms of short term needs. There is no evidence that Man has done so, so far. All evidence is to the contrary. Else we would not have

reached the present state, when we have to save not only Man from Man, but save the mother earth from him and for him.

Law - whether customary or statutory, has, however, tried to bring rationality in the conduct of Man by defining rights and obligations of individuals to each other and the State and has tried to ensure a peaceful existence. The progress of nation- States is accompanied by the progress of law in this direction. Law can play two-fold role - one of codifying the existing customs and practices and responding to the needs of time. The other of ushering in a new social order of marching society to a new goal - the role of social change.

We have today reached a stage when law has to be harnessed for both purposes - to answer the felt necessities of time and also to initiate a change for a new social order. Since mankind cannot survive without harmonious relations with each other and with the Nature, we need laws which will curb, control and, if possible, eliminate the causes which disturb this harmony. That is the felt necessity of time. We also need to design a new order both at the national and international level, an order which will not breed causes of disharmony or will leave the least scope for their development. We thus want both the remedial as well as the creative law.

The remedial law has to be made effective to tackle the existing conflicts between Man and Man, and between Man and the Nature. The discrimination between Man and Man - whether on the ground of caste, colour or creed, sex, religion or language has to be ended. The growth of population has to be checked. The environmental pollution and ecological imbalance have to be prevented. The production of dangerous goods and services and the employment of dangerous technology has to be put an end to. Ignorance, poverty and diseases have to be banished, so also the vulgar consumption and social and economic inequalities.

But more important is the use of law for creating a social order at the national level where there will be the least possible scope for the emergence of social conflicts. With this end in view the New Social Order should ensure to every member of the society all basic economic and civil rights. It should prevent the growth of social and

economic inequalities. It should also check consumerism and limit population. The law must also create a new international order where all nations will be treated as equal partners and the resources of the world would be pooled and shared equitably. The wars and disputes of all kinds should be resolved through discussions and conciliations failing which by compulsory adjudication backed by effective implementing machinery, if necessary.

The members of the legal fraternity have a major responsibility in this behalf, in dual capacity. As citizens and leading members of the intelligentsia, they have an obligation to take the initiative and show the way to the rest of the society. Since the new social order is to be created through the instrumentality of law, as experts in wielding the said instrument, they have to act as the path finders and agents of change. The rest of the society, in fact, looks to them for guidance for the purpose. Hence, for the creation of the new social order both at the national and international level, an obligation to ensure a peaceful and an orderly change - over is cast upon the legal community. For this purpose, it is also necessary to develop harmonious relations between the legislature, the executive and the judiciary which will ensure a smooth implementation of the programme to usher in the New order. Any disharmony between them is bound to obstruct and retard the progress towards the desired order of things.

The emergence of European Community in the recent past, has shown the world the way to unity, cooperation, fruitful participation and collective welfare . What is more, it has proved that if there is a will, mankind can come together for solving common problems, for mutual help and for the benefit of all; however intense may be the past conflicts between the member nations. If the regional communities on the same lines are formed in the rest of the world, it would not be too long before one world community of all the nations, emerges. The legal community all over the world has, however, to exert and endeavour to create such world community to ensure lasting harmony and peace.

While the goals of regional communities and of world community may be a little distant at present, there is no reason why, in the

meanwhile, the legal communities of different countries should not come together and forge alliances among themselves for drawing up a framework of the new social order to be established in each country, and also for drawing up a design and agenda for the regional communities as well as for the world community. The exchange of thoughts and ideas on the subject between the members of the legal communities of different nations would help generate much needed climate of mutual respect, trust, goodwill, cooperation and fraternity. It would also send the right signals to the other sections of the society and the respective Governments of all the countries, and will help, in the foreseeable future, to eliminating the climate of suspicion and distrust and melt the hardened attitudes and snow-cold relations between the peoples and the nations. This will go a long way towards building bridges between the peoples - thus paving way for harmonious relations between them.

Will the legal fraternity read and accept this challenge of the time?

[Speech delivered at Mount Abyu, Rajasthan on 'the role of jurists in establishing universal harmony on 6. 2. 1993.]

THE ROLE OF THE COURT IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

SYNTHESIS OF HUMAN RIGHTS

- 1 There are certain minimal rights which have come to be recognised as fundamental being the basic conditons of civilised living. They are broadly classified into civil and political rights on the one hand and economic, social and cultural rights on the other. These rights are indivisible and interdependent and their classification into civil and political rights and economic, social and cultural rights is more dialectical than real, while the former are more in the nature of injunctions against the authority of the State from encroaching upon the inalienable freedoms of the individual, the latter are demands on the State to provide positive conditions to capacitate the individual to exercise the former. The object of both the sets of rights is to make the individual an effective participant in the affairs of the society. Unless both sets of rights are available, neither the full development of the human personality can be achieved nor true democracy can be said to exist. This was recognised even by the United Nations in 1986 when it acknowledged the right to development, as a human right. The right to development as formulated in the 1986 U.N. DecelARATION is a synthesis of the two sets of rights. The developments both in the capitalist and the Communist world till date have also demonstrated the validity of this holistic approach to human rights and the futility of insisting on one set of rights and ignoring the other.
2. The realisation of the fact that both the sets of rights are essential for the full development of man does not, however, detract form the reality that the assurance of civil and political rights does not invlove taxing of the resources of the State whereas the procurement of economic, social and cultural rights involves outlays of the resources, the extent of which depends upon the size of the deprived sections in the society. While therefore, it is easier for

every society to ensure civil and political rights, the capacity of each society to secure economic, social and cultural rights varies depending among others, upon its population, its resources, its level of economic development, the efficacy of its economic structure and the efficiency of its administrative machinery. Depending upon the economic organisation of the society and the extent of the economic and social inequalities prevailing in it, the nature and degree of the conflict between the rights of the haves and have-nots also varies. To secure economic, social and cultural rights for the have-nots and to ensure that the existing inequalities do not empower the haves to dominate, the have-nots in the exercise of their civil and political rights, the rights of the haves may have to be restricted. One of the paramount duties of courts in such societies is, therefore, to promote rights of the have-nots by regulating and restricting the rights of the haves, if the latter obstruct the former. In the developing countries in particular, where economic and social inequalities are galore, the courts are constantly called upon to resolve this conflict between the rights of a tiny section of the haves and those of the vast majority of the have-nots to ensure basic human rights to the latter by restricting the rights of the former. The courts have thus to adopt the systems approach in promoting the human rights - and approach which seeks to harmonise and promote the rights of all.

3. The quality and content of the economic, social and cultural rights will differ with clime and time and will also depend upon the economic development of the society. The right to food for example also means the right to adequate and nutritious food. The quantity and quality of the food available to the individual will depend upon the resources of the society. Likewise, the right to clothing and shelter necessary to afford physical protection will vary in its content from clime to clime and will again depend upon the resources of the society. The right to education, sufficient to gain livelihood similarly will depend for its content upon the nature of the economy and the economic and techno-

logical development of the society. Which of the rights will have competing precedence among them, on account of the resource-crunch will depend upon the ultimate goal, the social and cultural traditions and the level of the economic development, of the society.

THE LEGAL, MORAL AND FUNCTIONAL BASIS OF THE ROLE OF THE COURTS IN PROTECTING AND PROMOTING HUMAN RIGHTS AND THE LIMITS OF JUDICIAL ACTIIVSM.

4. The fundamental human rights are entitled to be respected and enforced in every society. The duty to enforce them invariably falls on the courts of the land. Where they are recognised, the courts are required to interpret and enforce them, on occasions, by reading into the provisions either the supposed intention of the framers of the law or by expanding the legal provisions to read into them new rights to meet the changing needs of the time. Where they are not incorporated in any statute, the courts as the conscience keepers of the society are called upon to espouse them as a part of the moral law of the land. Where the courts expand the existing provisions and read new rights in them or espouse them as a part of the development of the common law, it cannot be gainsaid that they embark upon judicial policy-making. While embarking upon policy-making, they necessarily bring into play their own perceptions and value judgments. In forming the value judgments, the universal recognition of the right or rights in question may serve as a valuable norm. The declarations of human rights by the United Nations from time to time, not to speak of the Magna Carta, the Rights of Man and the Bill of Rights, thus serve a vital purpose even if on account of some reasons, the member-States are not able to subscribe to them immediately the declarations are made. The courts of such countries can always look upon them as norms to be attained in future when it is feasible to do so.
5. The efficacy of the courts in protecting and promoting human rights depends upon various factors. The existence or non-

existence of the power of judicial review of the executive and legislative measures, the power of the executive and the legislature to nullify the decisions of the courts even where the power of judicial review exists, the existence of an impartial, independent, informed and enlightened judiciary and the means available to the judiciary to enforce its decisions are some of the said factors. No less important are the social and cultural traditions of the society, the strength and efficacy of the public opinion, of the media and the voluntary organisations, and the freedom available for educating, organising and asserting public opinion.

6. The courts in all jurisdictions - whether the human rights are statutorily recognised or not - have the duty to protect and promote the fundamental human rights as a part of their duty to promote correct moral norms. As the upholders of the rule of law, the courts in effect act as the guardians of the moral values incorporated in the laws of the land. If the laws themselves are inconsistent with the moral values enshrined in the fundamental law like the Constitution, the courts will strike down the law where the power of judicial review is vested in them. Where it is not vested, they may read down the law to bring it in conformity with the moral values accepted by the society. The evolution of the morals of the society is not an event but a process. The morals are value judgments arrived at by a consensus. They are necessarily relative. The needs of the time dictate the correct conduct to ensure unity, stability, peace and progress of the society. The ultimate aim of any society further has to be to promote the dignity and to develop the potentiality of the individual. Except in circumstances where peace and stability of the society is in danger, the freedoms of the individual necessary to secure the dignity and to promote the personliness of the individual should not be compromised. Human rights, whether primary or secondary, are nothing but the means to secure the dignity of the individual and to ensure the growth of his personality. In that sense, the human rights are nothing more nor less than so many freedoms necessary to secure conditions of the maximum

growth of the human personality and thereby to ensure the maximum progress of the society itself. The experience shows that the denial of these freedoms leads to conflicts and tensions and jeopardises the peace and progress of the community. The morals which the society accepts at any particular point of time in terms of the 'do's and don'ts derive their justification from their efficacy in preserving and promoting these freedoms. In course of time, some 'do's and 'dont's become irrelevant and often prove obstructions to the peace and progress of the society whereas others continue to be of abiding value. The new freedoms, i.e., the new values, compete with the old for their acceptance. If the stability of the society is not to be endangered and the rule of law is to survive, as defenders of the rule of law, it becomes the duty of the courts to recognise the new values and to uphold them. When the courts do it, they contribute not only to the moral development but also to the progress of the society. While discharging this function, they may have many times to take even the initiative and give lead to the society. Their success in this enterprise will depend upon how well they are informed and enlightened to discharge this duty. They have not only to be abreast of the development and the public opinion at home but also of the developments in other societies and of their reactions to the emergence of the new human rights. There is no doubt that while examining the experiments in the other jurisdictions, the courts will have to keep in mind the differing social and cultural backgrounds and not to accept the rights evolved elsewhere blindly, unless of course they are primary inalienable rights.

7. This duty also belongs functionally to the courts. The courts are better suited to take the initiative in this sphere. Neither the executive nor the legislature - the only other organs competent to enforce new rights - are ideally suited to discharge this function. In democracies, they are obliged to follow electorally accountable policies and promote new values lest they antagonise some sections of the society. Where electoral battles are

fought on particular issues involving new rights, the majorities won may not be adequate to push through the new agenda. Even when the new programme is implemented, it is bound to be challenged in courts by the minority opposed to it, if the action is subject to the judicial review. Where there is no power of judicial review, the day to day implementation of the measures may be obstructed unless there is a full cooperation from the courts. What is further, neither the executive nor the legislature has always the time and the patience for the requisite study and dispassionate deliberation for evolving and recognising new rights and values. In many cases, new rights of however seminal importance and benefit to the society, may not find favour with the current public opinion which is usually subjected to the pulls and pressures exerted by the narrow selfish interests of the dominant sections of the society. The electorally accountable bodies may not, therefore, always be the proper forums for evolving human rights of abiding interest or even protecting the existing ones. This is particularly so on occasions of mass hysteria unleashed during social crises such as internal disturbances and external threats. Yet, these are the very occasions on which there is a need to be more vigilant against the trampling of the human rights. The courts thus are functionally best suited to undertake the task of protecting the existing human rights and promoting the new ones.

However, as in all other fields, in this field also the courts have to be circumspect and while taking initiative, have to keep their feet firmly on the ground and tread cautiously. They cannot allow themselves to be unmindful of the social consensus and of the consequences of their action which may otherwise prove counter-productive. They can feed the society only with that and with so much of it as it can digest. Otherwise even the silent majority may revolt and with the help of the legislature, nullify the effect of what is done by the courts. When this happens, the long term, if not permanent casualty is the measures which would otherwise have proved to be a lasting boon to the society.

SOME OF THE SPECIFIC AREAS WHERE THE COURTS MAY PLAY THE ROLE OF THE PROMPTERS OF HUMAN RIGHTS.

Access to the Courts:

8. The right to access to the court has to be examined at two different levels, viz., the awareness of the right and the means to enforce it.

The ignorance of rights is worse than the denial of them. where ignorance is perpetuated and promoted by the defect in the social structure or by social taboos, practices and injunctions, it becomes endemic. Hence, a positive programme of legal literacy becomes imperative as a condition-precedent to ensuring access to the court to all those who have legal claims to enforce but are ignorant of their claims. Equally important is the programme to provide means to those who though aware of their rights, are unable to enforce them for want of sufficient wherewithal. It is also necessary to emphasise in this connection that along with ignorance and poverty, the geographical distance also contributes to distancing justice from the people.

The courts can ensure the access to the judicial administration by promoting legal literacy programmes and legal aid schemes and also by exhorting the Government to decentralise administration of justice by establishing courts within reasonable distances of the habitats and also by starting mobile courts in the inaccessible areas. The courts can also plan circuit Benches and sittings.

Where a sizeable section of the society remains outside the legal and judicial system of the State whether on account of ignorance, poverty or distance, it is difficult to lay claim either to the rule of Law or democracy.

Arrears of cases and delay in their disposal:

9. The arrears of cases and delays in their disposal vary from jurisdiction to jurisdiction depending upon several factors such as the size of the population, legal literacy, social and political awakening, the number of laws to be administered, the number

of judges, the nature of economy and the level of economic development, the social and cultural traditions etc. It is trite to say that justice delayed is justice denied. The most pernicious consequence of the delays in deciding cases is the disenchantment and loss of confidence of the people in the efficacy of the administration of justice. That leads to and recent developments show that it has already led to, the emergence of Kangaroo courts and private organisations which use extra - legal measures to resolve the disputes between the parties. This development is the negation of the rule of law. Delays in the administration of justice may thus ultimately lead to the supplanting of the rule of law and civilised living. The arrears of cases and the delays in their disposal, therefore, have to be looked upon as a threat to the existence of all human rights and not merely as a system-defect.

10. The remedy for removing delays in the administration of justice is three-fold. One is to tone up the efficiency of the administration of justice. The second is to evolve procedures for speedy disposal of cases within the framework of the present court-system and the third is to evolve alternative mechanisms of justicing to supplement and where possible, even to supplant the present court-system. So long as the procedure evolved for dispensing justice is in conformity with the basic tenets of justice i.e., impartiality of the tribunal, observance of the principles of natural justice and fair trial/hearing, there need be no grievance with regard either to the procedure or the mechanisms so devised. The new mechanisms can range from machineries for pre-court as well as pre-trial conciliation centres and arbitrations to mobile courts. Conciliation courts like Lok Adalats in India and the mobile village courts which are proposed in a report by the Law Commission of India can go a long way to reduce the arrears and render inexpensive and speedy justice.

Safeguards during investigation of crime

11. The grant of anticipatory bail or bail as a matter of course except for extra-ordinary reasons to be recorded in writing and the requirement of interrogation of the accused in the presence of

his lawyer or a judicial magistrate will go a long way to safeguard the individuals against inhuman treatment during investigation and also prevent custodial deaths.

In view of the present atmosphere of increasing organised violence, ethnic and religious strifes, terrorism and drug-trafficking and the use of sophisticated arms and gadgets by the offenders is increasingly felt and the courts are under a pressure to do so. These offences affect vast sections of defenceless innocent men, women and children. It is, therefore, suggested that we evolve the concept of legal duty or responsibility on the part of those who are apprehended in connection with such crimes to speak the truth, if they are to enjoy their human rights. The statements of the accused should be recorded in the presence of the lawyers or the judicial magistrates, and the statements so recorded should be given due legal weight in appreciating the evidence. According to this view, what is involved on such occasions is the human rights of the few as against the human rights of the many, and the time has come to strike a balance between the two. A question is asked as to whether it is just to insist on the rights of the few who are apprehended when the rights of the many are at stake and would continue to be at stake unless the guilty are booked and the organised crime is stamped out. The courts have, no doubt, to take into consideration the modern reality of this planned crime and organised violence by private groups on a vast scale which endangers the life and possessions of not of any particular individual or individuals but of the vast sections of the innocent humanity, including the investigating officers and the judicial officers. What is more, on account of the reign of terror unleashed unashamedly and without the slightest fear of the law enforcing authorities, even the trials of such crimes are endangered and it becomes difficult to prove the guilt. Witnesses are eliminated and even if they are alive, they are unable to tell the truth for fear of their life and the lives of their dependents. When

thus the rule of law itself becomes a victim at the hands of the organised gangsters, the time has become ripe to find out whether suitable rules not inconsistent with the presumption of innocence of the accused should not be evolved which while safeguarding the human rights of the accused would also punish the guilty and thus protect and promote the human rights of the defenceless citizens and preserve the Rule of Law.

Under-trial prisoners:

12. The need to shorten the period of commencement and completion of the trial need hardly be stressed. However, when it is found that for some reason or the other, not attributable to the accused, the trial cannot be commenced or completed within a reasonable time, the release of the accused on bail may be considered taking into consideration all circumstances including the likely absconsion and safety of the accused and also the safety of the witnesses. The increasing rate of crime and therefore increasing burden on the courts should no longer be pleaded as a cause for delay in criminal trials. The normal period for completing the trial from the date of the apprehension of the accused where he is in jail should not exceed six months and where he is on bail should not exceed one year. An assessment should be made of the required strength of the judges to conduct the trial keeping in mind the said norm, and the State should be exhorted to appoint sufficient number of judges to try the cases expeditiously, the speedy trial being one of the human rights of the accused.

Punishments

13. It has to be admitted that the sentences prescribed under the penal and other statutes are not based on any scientific study, whether the sentences are of imprisonment or of fine. Why only the specified period of imprisonment and amount of fine and not more or less is prescribed is difficult to explain rationally. The arbitrariness becomes evident when the statutes permit imprisonment of varying durations and fines of varying amounts

and leave it to the court's discretion to award the punishment. Instances are galore where for similar offences and for the accused in similar circumstances, sentences have been granted by the same judge and different judges differently. There is almost a lawless law in the matter of sentencing.

Different jurisdictions further permit different kinds of punishments for the same type of offences and view the same offence differently. In some jurisdictions there is a provision for suspended sentences whereas there is no such provision in other jurisdictions. In view of the increasing incidence of crime and violence and also of the overcrowding of the prisons, it has become necessary to have a fresh look at the mode of sentencing and to evolve a measure of sentences which will be just, rational and realistic and while meeting the needs of the society will also be in conformity with the human rights. It can hardly be pretended that the concept of human rights as it has evolved today was taken into account and even now is being heeded, while prescribing the sentences.

Illegal detention, deaths in judicial custody and compensation:

14. The court should increasingly resort to directing payment of compensation in cases where the prisoners are detained illegally or detained in prisons beyond their terms of sentences and also for deaths occurring in suspicious circumstances in judicial custody. The payment of compensation should be in addition to ordering prosecution of those who are responsible for the detentions and deaths. Since compensation invariably flows from the public exchequer, those officers who are responsible for the illegalities and the crimes, should be directed to pay at least a part of such compensation from their own funds. These measures will go a long way in checking the incidents of the illegal detentions and custody deaths which are on the increase.

Rehabilitation of the prisoners:

15. The courts can also consider giving suitable directions in appropriate cases for rehabilitating the ex-convicts and particularly the

female ex-convicts where they have no means of supporting themselves or are likely to be the object of social ostracism.

Institutional abuses and reforms:

16. Prisons, children's remand homes, women's rescue and rehabilitation centres, orphanages, mental asylums, leprosy homes and the like whether run by the public authorities or private organisations, being shut off from the public gaze, have often proved to be dens of exploitation and human rights-abuses. The inhuman and scordid treatment given to the inmates of these institutions comes to light only accidentally or through social activists and voluntary organisations, if at all they gain access to these institutions or to their inmates. Whenever the courts are called upon to deal with such institutions directly or indirectly, the courts should take an active interest in their working, and in the living conditions of the inmates and give proper corrective directions when the conditions do not conform to human rights standards and also constantly monitor or arrange to monitor the implementation of the directions.

Environmental cases:

17. With the growth of consumerism and the destruction and pollution of natural environment, the threat not only to the equality of life but also to the life itself is becoming more and more real. When, therefore, cases are brought to the notice of the courts, it becomes their imperative duty to investigate them and take suitable action and give appropriate directions to prevent ecological imbalance and environmental pollution. On such occasions, the courts will have to weigh the need of the society for economic growth as against the right of the people to lead a life in a healthy environment. Growth with justice to all should be the norm. The Courts can, in such circumstances, give both preventive and corrective directions to safeguard environment and human life.

The promotion of human rights also demands from the courts directions to ban the manufacture of dangerous products and

employment of dangerous technology to produce them. For the same purpose, the courts should also ban the import as well as the sale of dangerous products.

Public Interest Litigation:

18. Public Interest Litigation has become the mainstay of the human rights movement and many abuses of human rights have come to be corrected in different jurisdictions through cases brought to the courts by the social activists and voluntary organisations. Many social causes affecting all sections of the society as well as the grievances of various groups in the society are being redressed and are capable of being redressed by the courts. The courts should, therefore, encourage public interest litigation by disregarding normal technical rules of procedure and evolving new procedures for entertaining the causes and giving reliefs as well as for overseeing and monitoring the implementation of the directions that they may give in such matters.

THE INDIAN EXPERIMENT

19. In the Constitution of India, the civil and political rights are incorporated as Fundamental Rights and are made enforceable. The economic, social and cultural rights are enshrined as the Directive Principles of the State Policy and though not enforceable, are made fundamental in the governance of the State. Hence, it is the bounden duty not only of the executive and the legislature but also of the judiciary to implement them. At one time, there was a controversy as to whether the Fundamental Rights could be enforced ignoring the Directive Principles or whether the Fundamental Rights could be restricted to give effect to the Directive Principles. It was also argued that the Fundamental Rights were the means to achieve the Directive Principles which are the goals. The primacy between the fundamental rights and the directive principles, which were also described as the primary and the secondary rights respectively, was a matter of considerable debate in courts. However, the law which has come to be developed on the subject today, seeks to

harmonise the Fundamental Rights with the Directive, Principles and thus to synthesise the civil and political rights and the economic, social and cultural rights. The courts have been reading Fundamental Rights into the Directive Principles, and expanding the civil and political rights to include in them the economic, social and cultural rights. To that extent the higher courts, viz., the Supreme Court and the High Courts which are also vested with the power of judicial review, can be said to be assuming the activist role and embarking upon judicial policymaking. Since most of the human rights declared as such by the United Nations are incorporated in the Indian Constitution either as fundamental rights or directive principles, by striking the synthesis, the courts in India attempt to promote and protect the universally recognised human rights.

It is in discharge of this role that the courts in India have opened the door for public interest litigation and have done significant work on the human rights front in several fields. The Court's activity in protecting and promoting human rights has embraced the child labour, bonded labour, under-paid workers, under-trial prisoners, handcuffed prisoners, deaths in judicial custody, illegal detention, missing persons; the accused's right to be informed of the availability of the lawyer to defend him; conditions in prisons, juvenile remand homes, women's rescue and rehabilitation centres, orphanages, mental asylums, and leprosy homes; slum and pavement dwellers, prostitutes; children; environmental pollution and ecological imbalance; rehabilitation of project affected persons and compensation to victims of manmade disasters. The Courts have been giving *locus standi* to social activists and voluntary organisations in such matters and treating even letters written to them as petitions. The Courts have also been granting monetary compensation, appointing commissions, giving directions and monitoring their implementation. The role of the Courts on the human rights front has made judiciary as an institution popular, credible and strong. It has also strengthened the confidence of the people in the judiciary. The

people have come to look upon the judiciary not only as the last but also as the only saviour in the hour of their need.

The hillocks have been climbed. The mountains are yet to be scaled.

The future

20. The achievement of the Courts in promoting human rights will largely depend upon their success in synthesising the civil and political rights with the economic, social and cultural rights and in evolving a systems-approach whereby economic, social and cultural rights are ensured to the have-nots to enable them to exercise their civil and political rights equally effectively with the haves. The holistic approach has to be adopted not only for viewing all human rights as a part of an over all scheme but also for securing them to all the sections of the society. Unless, such synthesising and systems-approach is adopted, there will always remain in society, a sizeable deprived section - and this section forms the increasing majority in all developing countries - which will inevitably lead to tensions and conflicts and crimes, violence and disturbances. This will jeopardise peace, stability and progress of the country setting in motion forces inimical to the preservation of human rights. It has to be appreciated that at the root of the private violence unleashed whether by ethnic, religious or regional groups or social classes, lies the denial of basic human rights. The failure to realise this vital truth has so far been responsible for an ad-hoc and lopsided approach to the promotion of human rights inevitably resulting in frustration on the human rights front. The judiciary as an institution uninhibited by and independent of political and economic forces and committed to the promotion and protection of human rights alone can avoid the past mistakes and single- mindedly **lead kindly light**.

[Speech delivered on the 'Role of Court in the promotion and protection of Human Rights' at the 9th and 10th sessions of the 5th Conference of Chief Justices of Asia and Pacific held in Colombo Sri Lanka on 15.9.1993]

THE QUESTION OF TIBET'S FREEDOM IN PERSPECTIVE

I am grateful to the J.P.Memorial Foundation for inviting me to preside over this 14th lecture in the memory of the Lok Nayak Jayaprakash Narayan. My gratitude is deepened because the lecture is to be delivered by His Holiness the Dalai Lama, who is not only a leader of his followers, but a champion in the cause of human rights.

Jayaprakashji - J.P. as he was fondly known - was one of the few leaders of this country who were held in high esteem by all sections of the society all over the country. The essence of his leadership lay in his deep moral convictions, his passionate commitment to the people's causes, his constructive bend of mind and above all his abnegation. The values he cherished and the ideals he nursed kept him away from power politics and plunged him in constructive activities, away from the glare of publicity but constantly immersed in the problems of the masses. Many blamed him for not being at the centre of the stage when he was called to share power and lead the country alongwith other starwarts of the day. They misunderstood his genius. The power structure of the day was not his cup. He longed and laboured to construct a different model. That is why he devoted himself to the grass-root politics and took passionately to the Sarvodaya Movement.

One wondered how a mild mannered and a softspeaking man like him could ever have been an active and an ardent participant in the freedom-struggle and the underground movement, and at the fag-end of his life, a focal point of the resistance movement during the emergency. There was nothing surprising in it. His deep commitment to moral values, his insistence on the observance of certain minimum ethical standards in public life and his pursuit of freedom and dignity of life as cherished goals would not have kept him away from playing his natural role on both the occasions. Behind his calm exterior, lay a restless soul, an organic intellectual and a constructive worker. Self-sacrifice was the foundation of his life and constructive thinking and working were the essence of his personality. Agitational

politics was foisted on him by the circumstances and he could not avoid it. That was, however, not an essential part of his life.

The era of leadership was over long ago. We have since then the era of managers. This is true of all walks of life and all institutions. It is a worldwide phenomenon, and several factors are responsible for it. The most important among them is a lack of a worthwhile coherent ideology to pursue. It is a strange development considering that there are more causes to fight for today than ever before. The need of the hour is an ideology with universal appeal based on moral order which can guide all human activities.

As a sitting Judge, I cannot express any views on the subject of to-day's lecture and I shall refrain from doing so. Probably the organisers of the lecture have made a wrong choice in asking me to chair the lecture. Like you all, I have come here to listen to His Holiness on the subject. However, I would like to express one or two thoughts on this occasion which have no connection specifically to the issues involved in the subject of the lecture, but are of general relevance.

Buddhism has taught mankind non-violence in thoughts, in words and in deeds, compassion for others and respect for the dignity of life not only of human beings, but of all the animate and inanimate world around us. The teachings of Buddha have become more relevant and imperative today when violence, permissiveness, consumerism and unscrupulousness have become a way of life. If we have to counter these phenomena, each of which is powerful enough to destroy all life on this planet, we have to evolve a new world order and hark back to our ancient way of life based on minimum and simple needs, pursuit of higher values and good quality of life and tolerance and compassion for others. Buddhism and all other religions which have this core philosophy of life have to take the centre of the stage.

It is a historical experience which has become a grim reality today, that political freedom does not necessarily protect either economic or cultural freedom. The globalisation of the economy and the invasion of cultural life through remote control, are the dominant features of the present decade. Those who have the economic power

and those who control the media and particularly, the electronic media, have a sway on the political, economic, social and cultural life of the rest of the world. No country or social group can remain isolated or unaffected by the onslaught of these two forces. Economic dependence and the uncontrollable beaming signals of the satellite T.V. in particular, are responsible for this economic and cultural aggression. It is in turn, destabilising the political and social life in all parts of the world. The mankind has yet to evolve an adequate defence against this new all pervasive imperialism of the money and media power. The only sure defence against this predicament appears to be the minimization of our needs and numbers, and the tempering of our scientific and technological development with spiritual and moral values. This country is the proud mother of two dominant religions - Hinduism and Buddhism - which have preached this philosophy, throughout.

This country has also been proud of the fact that the faithfuls and followers of all religions could find it a safe place to preach and practise their religion, and all those persecuted by religious and ideological bigotry could find this land a safe shelter. We have always believed in tolerance and peaceful co- existence of all sects, cults and cultures, ideologies and philosophies. Lately, no doubt, there have been some aberrations which have done much to damage this historical image. One only hopes that this is a transient phase and the future will see the end of the politics of religion and also of the religion of politics, both of which are responsible for tension, strife and disharmony.

We are today, witnessing two contradictory phenomena, one of economic integration and voluntary surrender even of a part of political sovereignty for common good, and the other of an upsurge in the assertion of separate religious, ethnic, cultural and linguistic identities. While there is an awareness in a part of the world, of the necessity to bid farewell to arms, in other regions, there is increasing resort to violence as the only means to solve the problems. European Economic Community is the instance of the first while ethnic and religious strife in various parts of the world shows the other trend. It

is true that in most of the latter cases, the suppression and repression of the basic human urges in the past, are responsible for the violent development. But it is equally true that in some cases the strife is fomented and sizeable sections of the humanity are made pawns in the game of international politics.

Amidst these contradictory developments, there is a big question mark as to what awaits us in future. We have all, therefore, to concentrate our efforts and gear up our energies to consciously direct the developments of the future, if the world is to be a safe place for mankind. And for this the mankind looks to the evolution of a new humanitarian world order. Let us hope that in course of time, we succeed in evolving one.

[Presidential address delivered at the J.P. Memorial lecture 1993, organised by the Jayaprakash Foundation, New Delhi on 'The question of Tibet's freedom in perspective' on 22.10.1993 at New Delhi]

NATION'S CALL TO YOUTH

Hon'ble the Chancellor, the Vice-Chancellor, the members of the Executive Council and the Senate, distinguished invitees, the members of the teaching staff, the distinguished recipients of the Honorary Doctorate and my graduate, post-graduate and other student friends.

I am beholden to the University for doing me the honour by inviting me to be the chief guest at this convocation. Let me first congratulate the recipients of the Honorary D.Litt. By conferring on them the prestigious degree, the society has through this University, acknowledged the distinguished services rendered by them in their respective fields. That society alone progresses which spots its meritorious members and recognizes and honours the valuable contributions made by them to social good and progress. The society thereby sends a healthy message to its other members. They also serve who serve silently and in fields away from the fanfare of publicity. The society may neglect them and their life's work only at its cost. By honouring them the society acknowledges its debt to them and honours itself.

Those of you who have earned Ph.Ds, post graduation and graduation degrees, of course also deserve congratulations. But these congratulations are for the success in the examination. You have yet to choose your life's mission and start your journey to fulfill it. The society is yet to be benefited by your achievements in life.

You are graduating almost on the threshold of the 21st century. As young educated men and women, you are expected to be aware of the legacy of the mankind as a whole till date - its achievements and failures, its triumphs and defeats, its glories and miseries, its wisdom as well as its follies. Along with this global heritage, you are also expected to be familiar with the legacy of this land - which is as rich as it is varied, as enviable in some fields as it is undesirable in other respects. The region in which you are born and have studied has also its peculiar historical, social and cultural traits and they are also expected to have been absorbed by you in your formative young years. You are fortunate to have come out of the sheltered portals of the educational institutions with all the valuable experience, wisdom

and lessons of the history upto this date. If you have digested even a part of these legacies, you will have derived inspiration and acquired capacity to face the future with courage, determination and foresight. You are less likely to be daunted by problems, and commit mistakes and follies of the kind the past generations did. That is an advantage which every generation has over the preceding generations, provided the generations that follow study the past in the proper perspective and draw from it the proper lessons. Hence the importance of a dispassionate study of history by every individual whatever his special branch of study or avocation. No education is complete without the study of history.

You are more fortunate in that you have studied under the umbrella of a University which exercise its academic jurisdiction over a region which has made history in almost all walks of life. It has witnessed revolutionary movements in spiritual, political, educational and economic fields. All these movements were born within a few miles of the precincts of this University. The 13th Century saw rekindling of spiritualism in the common man by Saint Dnyaneshwara who opened its gate to all by not only explaining the philosophy of Bhagwat Geeta in common man's language but also propounding his own unique philosophy with its aid, much to the chagrin of the orthodox. The foundation laid by Dnyaneshwara for spreading spiritualism was built upon by the other saints who followed him. They also championed the cause of spiritual equality and the equality of man before God, whatever his caste and community and whatever his status in the society. The message of equality between man and man reached its pinnacle in the 17th century in Saint Tukaram's preachings which have yet to be surpassed for their simplicity and felicity of language, profundity of philosophy and clarity and forthrightness of their message. His Abhangavani has become a classic literature, has travelled from generation to generation and has survived in the hearts and minds of both the literate and the illiterate, the young and the old, for all these years. The same century witnessed yet another epoch-making revolution in this region. It was a saga in unparalleled leadership, indomitable courage and unflinching

determination. When the spirit and mind of the rest of the country was enslaved, when the fervour for independence was dead elsewhere and when others submitted to the political, economic and cultural domination and exploitation, it was this region again which rose in revolt under the able leadership of Shivaji the Great and unfurled the flag of independence. It asserted its right of selfdetermination and changed the course of history by establishing an independent empire.

About 200 years later, this very region gave birth to a portentous revolution. This time it was in the field of social, educational and economic emancipation. In the year 1848, when Marx and Engels came out with their famous Communist Manifesto with the clarion call to the workers of the world to unite against their economic exploitation, in that very year and in this very town, Jyotiba Phule asserted the right to freedom of education and to freedom not only from economic but also social exploitation. It was a call for a more comprehensive revolution. Jyotiba founded successfully the first ever school for girls in this country in that year and ran it along with his wife Savitribai, and as the nemesis would have it, the first girls to take their education in this school and in this country, were the daughters of the most down-trodden sections of the society - the Mahars and the Mangs. But that was only one part of the revolution which he had started. His larger achievement was the banner of revolt he raised against fundamentalism and intellectual slavery. He was one of the foremost rationalists of this country and can truly be called as one of the founding fathers of the rationalist movement in this country. While others merely preached, he practised what he preached and attained Mahatmahood which he richly deserved. The seeds which he sowed led eventually to the moral, social, educational and economic liberation movements and to the emancipation of the hitherto suppressed and oppressed sections of the society. Dr.Ambedkar regarded him as his Guru. The philosophy which he preached made such incisive attacks on fundamentalism that even to-day - hundred years after his death - no word of abuse is spared by the reactionaries to malign him.

This region was also in the forefront of the freedom struggle against the British regime and gave to the country many a freedom

fighter. One of the frontline national leaders - Lokmanya Tilak - a fearless fighter, an ardent patriot and erudite scholar at the same time, was the product of this very town.

Equally important is the economic revolution ushered in by an uneducated peasant from the adjoining Ahmednagar district. Padma-shree Vikhe Patil started the first ever co-operative sugar factory in this country in 1960's and since then the co-operative movement has not looked back. It has spread with vigour, to all branches of agriculture and manufacturing and service industry and has brought about a metamorphosis in the economy of the respective sectors. By eliminating the middle-man and ensuring economic price to the farmers, by providing local employment, raising standard of living and changing the style of life of the millions, and at the same time by taking the medical educational and cultural facilities to the hitherto neglected areas, it has virtually revolutionised the country-side.

I have dwelt on this legacy of this region at this length with a purpose. It is to remind you that you as students of this University are carrying with you additional glorious legacies of the past. They also dictate to you your duties and responsibilities to the society, hereafter. The various liberating movements that this region gave birth to and fostered, cast on you an obligation, viz., to rise to the occasion and to meet the needs of the society as felt today. The great men who pioneered and participated in these movements read the signs of their time, understood their message, diagnosed correctly the root causes of the prevailing ailments of the society and came out with proper solutions to remove them. They were not all erudite scholars. Some of them had not even formal education and those of them who received such education, did not depend upon it alone for playing their role in the service of the society. A sensitive mind, continuing self-education, constant interaction with the society, eagerness to learn lessons from the actual experience in life, an ideology to follow, a definite goal to achieve and an undeterred determination to attain that goal, were the assets they possessed.

By all accounts, you are in a more favourable circumstance. You have received formal education. You are exposed to more information

and knowledge through print and electronic media. you are living in a democratic regime and under a rule of law and in a society which enjoys freedom of conscience and of expression and association. You have speedy access to others by oral and written word and by communication and transport. Above all, you have more legacies of the past not only of this country but also of the world at large to draw upon. These are the external assets and you have them in abundance. But the external assets by themselves will not bring forth from you anything worthwhile unless you also possess internal assets which you have to develop yourself. You have to be sensitive to the developments in the society which adversely affect the common man. You must have a will to eliminate the forces which are responsible for these developments. You must have a goal to achieve and an ideology to follow. Above all, you must have determination and courage to pursue your goal - whatever the difficulties. The education you receive in schools, colleges and universities cannot furnish you with these internal qualities. It can only equip you with knowledge and make you capable of taking your own decision. It is ultimately for you to take the ultimate decision. Whether you will work only for your own interests or for the interests of the society as well, has to be decided by you. To the extent that you work for the society also, you redeem your debt which you owe to it in immense measure. If the education you receive does not even give you the necessary knowledge and make you capable of taking your own decision, the education has failed in its primary objective.

What does society expect from educated persons like you and me, and what should we expect from the society in turn? The detailed answers to these questions will vary from time to time depending upon the conditions of the society in which we live. For the needs of society change with the changing times. But one thing is certain. As educated individuals, you have some distinct obligations, responsibilities and duties towards the society at all times, and you are expected to discharge them. The society in turn is expected to give you opportunities to develop your potentialities to the fullest extent

and utilise your knowledge, skills and talents for maximising the common good and happiness.

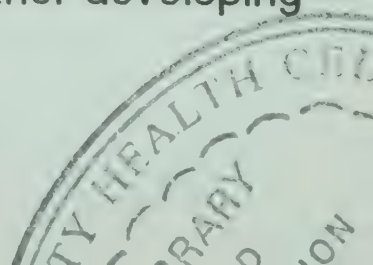
What are the distinct obligations which you carry with you as educated members of the society, and why?

In the first instance, it must be remembered that those of you who have studied in educational institutions receiving grants or institutions run by the Government and public authorities, had your education subsidised by the society throughout. The cost of your education has been borne by the other members of the society who comprise among others, the toiling millions in farms and factories. To-day, we hear criticism of the educational institutions run on no-grant basis and on capitation fees. In principle, there is nothing wrong in imparting education by charging capitation fee so long as the fee charged is just enough to meet the cost of education. If Government or other public authorities have no funds and therefore cannot afford to subsidise education beyond a certain limit and if private institutions step in to meet the need of the aspiring students and organise imparting of education on self-help basis, such well-meaning venture has to be welcome. The only alternative to such endeavour is to deny the deserving students the education they need and are capable of pursuing. There is so much loss of talent to the society. The capitation fee institutions have earned a bad name because some of the unscrupulous managements are running them for profit. There are ways and ways of tackling this evil. the most effective way is to calculate fees on no-profit-no-loss-basis and ensure that admissions are made to these institutions by the Government from among the applicants on strict merit basis and no student who is not recommended by the Government is admitted to these institutions. It is forgotten by those who are receiving education in aided and Government and semi-Government institutions that the fees which they pay do not cover even a fraction of the cost of education they receive. The entire balance of the fees is paid as capitation for them by the rest of the society. The point is that those of you who have received education in aided and public institutions are all the more under an obliga-

tion to compensate the society by rendering your free services to it. But for the capitation fee paid by the society for your education, you would not have been what you are today. This must be kept constantly in mind.

This does not mean that those who have paid the cost of their entire education in terms of the capitation fee, have no obligation towards society. All educated persons have this obligation for the simple reason that in addition to the visible monetary costs, the society contributes to the education of all, in myriad invisible ways. The land given for the construction of the educational institutions is sometimes free and sometimes at nominal price or rent, and sometimes acquired from others depriving them even of their sole means of livelihood. The institutions also receive free services of social workers who establish and run them by making several sacrifices. The institutions also get the benefit of the subsidies and exemptions from taxes and duties for importing equipment necessary for imparting education in some disciplines. Even the instruction which is imparted by the teachers in these institutions is on a considerably less salary than the teachers experience, knowledge, talent and labour deserve. the instruction imparted by the teacher is not born in a vacuum. Its source is the accumulated and inherited knowledge of the society over the centuries. Every educated man, therefore, owes his debt to the society in one form or the other.

You should also not forget that in this country, you are being provided with secondary, college and university education at the cost of millions who are starved of the primary education for want of sufficient funds. About 60 per cent of our educational budget is spent on college and university education and 25 per cent on secondary education. Only 15 per cent of it is available for primary education. In terms of population, it means that less than 15 per cent of the population gets 85 per cent of the funds for its education while more than 85 per cent of the population which is in need of elementary education gets only 15 per cent of the funds. This is an imbalance unique only to this country. In the developed and other developing



countries, higher education, i.e., education beyond the secondary stage and in some countries even the secondary education is not subsidised at all by the Governments and all those who want to receive higher education have to pay its cost in its entirety. Most of you would have been deprived of the college and university education, if you were to pay for it as in other countries, whatever the branch of your study. It is, therefore, also necessary for you to remember that you have been educated at the cost of millions of your brothers and sisters who are starved of even their elementary education.

Having received your education at the cost of the society and at the cost of the toiling and educationally starved millions, you cannot be excused if you neglect even your primary duties to the society as educated persons. what are these duties?

Education is imparted to you to enable you to think independently and to discriminate between right and wrong and between good and bad. You are supposed to develop a scientific attitude and a spirit of inquiry. You are not expected to accept blindly and unthinkingly everything that is said and written however revered the person or the book which says it. If you accept whatever is told to you without questioning it, there will be no difference between you and your illiterate brethren. The only difference between you and the illiterate will be that you accept what you are told in spite of your education and the illiterate does so without going through the portals of any educational institution. For the society, the resources spent on your education are just a waste. You must remember that the progress of mankind from stone age to the present space age has been made possible by those who questioned everything that was told to them and applied their mind independently to find out the truth or otherwise of what was told. They did not take anything for granted or accept anything just because it was handed down to them by traditions or on high authority. It must be remembered that however venerable the person or the writing, whatever is said or written is on the basis of the information available at the particular time. The frontiers of knowledge are ever expanding and are unencompassable. Hence whether it is

Manu or Marx, whatever he has said has to be tested by us by applying our own mind independently and in the light of the latest knowledge available, and accept or reject it by testing it on the anvil of our own reasoning. This is the least duty which you owe to the society as its educated members. If you fail in it, you would have betrayed the society of the trust it reposed while spending its valuable resources on educating you.

As educated persons, you are also expected to keenly and sympathetically observe the conditions of the society in which you live. You are expected to analyse them rationally and scientifically without prejudices and biases and keeping the interests of the society above all other considerations whether of caste, community, region, religion, language or sex. As educated persons, you are expected to behave as a member of the larger brotherhood of mankind and follow the only religion - the religion of humanism and find out a solution to the problems of the society in conformity with the spirit of humanism.

Being educated, you are also expected to lead the rest of the society and take initiative for bringing about the desired social reforms and changes. The society in which we live is to-day suffering from various social diseases-ignorance, poverty, social and economic injustice and inequalities, casteism and communalism, corruption and criminality. It is, therefore, necessary to evolve a society where ignorance and poverty are banished, where casteism, communalism, corruption and criminal tendencies are eradicated, and where social, political and economic justice is assured to all. For this purpose, we have to promote and foster positively the spirit of self-sacrifice, universal outlook, tolerance, understanding and compassion for all and to cultivate and insist upon certain basic moral values both in private and public life. If you are superficial, selfish, sectarian and narrow-minded, you will fail in this duty. You will also disqualify yourself for being called an educated person.

To bring about the desired social change, you are also expected to adopt non-violent and the least disruptive means when all peaceful means of change are available. You have to remember that ends do not justify means. The means that you adopt must ensure a smooth

change-over with the least amount of conflict and friction. Adventurism does appeal to young minds and excites their hot blood. But adventurism does not serve any cause. If education has not taught you to be circumspect, to control and regulate your urges and emotions, and refined your tastes and sentiments, it has failed to make you a cultured being. Far from being useful to the society, you may prove harmful to it. The knowledge that you have acquired may be put to destructive use.

You are also expected to give your best to the society, and to endeavour to excel in whatever field you are operating so as to be able to contribute the maximum that you can, to the total good and happiness of the society as a whole. In this respect, as in all others, you are expected to act as a model citizen setting an example to others.

You have further to remember that in the form of education you have acquired an important instrument of social power. You can put it to good use as well as to bad use. You should resist temptations to exploit others by the use of your knowledge. Every time you decide to act, consider whether your action is in the interests of the society at large and whether it will promote or destroy them. As an educated member of the society, you have to act as a watch-dog of its interests, and save them from the abuse of power by others.

You may ask me whether it is only a one-way traffic and whether you have only to give but not to expect anything from the society. You certainly have a right to expect from the society two things - one, an opportunity to develop your talents and to grow to your fullest height and to give your best to the society, and the other, to receive adequate recognition from the society for what you give to it. There is something wrong with the organisation and structure of the society which cannot or does not provide opportunity to all its members to develop their skills and talents fully and contribute their best to the society. The world has, however, yet to witness the emergence of a society where all its members have had a fair and an equal opportunity to develop their potentialities and take their rightful place in the society. The mechanism that Man has so far evolved to manage the economic

affairs of the society, has always left the control of economic power in the hands of the few, whether as landlords, industrial entrepreneurs, financial managers or government bureaucrats. The concentration of economic power has created economic classes leading to social inequalities and unequal opportunities. In our country, the inequalities have become endemic thanks to the caste system based on birth, the ingrained philosophy of the past Karma visiting us in the present birth, and the monopoly of learning by the few practised for hundreds of years. Hence, in addition to the economic structure, the social structure accentuated the inequalities in this country. Knowledge is a key both to individual and social progress, and monopoly of knowledge is the basis of all other monopolies. The class and the caste have always run parallel in our society for obvious reasons. As a result, the resources of the society and the opportunities to display skills and talents in all fields have concentrated in the hands of the few, and the vast majority of men and women have always remained deprived both of the resources and the opportunities. It is the nation which suffers on account of such inequalities. On the one hand, it is deprived of the skills and talents of the vast majority of its populace and on the other, the monopoly in the hands of the few, leads to stagnation, degeneration, exploitation and perversion. It is for these reasons that from time to time, there were revolts in this country and various social, religious and educational revolutionary movements were born. That is why again, when the Constitution of India was framed, the framers of the Constitution took a special note of the debilitating features of the Indian society, and not only provided for social, political and economic justice and equality for all, but also for the measures to attain them. Special provisions for the advancement of women and weaker sections of the society including socially and educationally backward classes of citizens and the scheduled castes and scheduled tribes, are among the said thoughtful measures. They are designed to ensure that equal opportunity is available to all the members of the society and they are able to develop their capacities to the full extent and to contribute their mite to the society. These provisions in our Constitution only recognise the truth that where in

addition to economic inequalities, there are social inequalities, mere economic aid and assistance will not enable the socially suppressed to rise to the level of others. This is also recognised in the United States where similar special provisions including those of reservations in educational institutions and employment are made for the Negroes.

But these provisions for the socially backward are only a step in the direction of the establishment of an equitable society. That step by itself will not create a just and equitable society either for the socially disadvantaged or for others. Both the pro and the anti-reservationists fail to realise that even if all the seats in the educational institutions and all the jobs available in the public sector are reserved or dereserved, they would not be sufficient to meet the needs of more than an infinitesimal section of the needy from either of the sections. Unfortunately, both the sections, by concentrating on the tiny number of seats and jobs reserved, as if they are the end all, are doing great injustice to themselves and the society. They are forgetting their primary and larger goal of creating a society where every member of the society, whatever his caste and community, will get education according to his aptitudes and talents, and a job suitable to his qualifications. In such a society, there will be no need for reservation of any kind in any field. The cause of the present internecine war between the needy sections of the society, is the inadequate number of educational seats and jobs. We have to strike at the root, and organise a society where there will be education and employment for every aspirant.

The task of creating such a society belongs to every individual and every institution. As educated members of the society, the responsibility of creating such society devolves on you, more heavily. As enlightened members of the society, you have to take the lead and show the way, to others. As recipients of social power which is what education is, you are expected to wield it not only for your individual advancement but also for the emancipation of all who are entrapped in, and enslaved by, the present social and economic structure.

Fulfilment of your expectations from the society thus lies in your own hands. The society is not an amorphous entity. It consists of men and women like you and me. Society becomes what its members make of it. Who are more qualified to make the society just and equitable than its educated members like you? You must realise that you are living in a society which is organised on an irrational and inequitable basis. Its resources are concentrated in a few hands. They are using them essentially for their profits and not for service of the society. The gains to the society are incidental. They are not aimed at. You cannot expect justice in such society. You will not get anything on a platter. You have to contribute your efforts first to create a just society. That is the kind of society our Constitution also envisages. You will thus appreciate that the fulfilment of your expectations from the society also depends upon your own efforts. All of you cannot expect in the present inequitable structure to get opportunity, much less an equal opportunity to develop your talents and display them. You will have to endeavour to change the present social and economic structure, for that purpose.

Our fore-fathers answered the call of the times in which they lived. More recently many of our predecessors sacrificed everything they had including their lives for gaining political independence from the alien regime. To-day, the nation calls upon you to build a new social order where everyone whatever his caste, community, region or religion, will live without want and fear, without exploitation and discrimination, and with self-respect and dignity; where, all will have an opportunity to participate equally in the affairs of the society and contribute their might to the common good and happiness. You have to answer this call of the nation. That is the task assigned to you by the history. You have to rise to the occasion and accept it as a challenge. If you succeed, you will go down in history as builders of the new society and a new nation which then alone will be in a position to take its prideful place in the comity of nations.

While wishing you all success in building your individual careers, I also wish you success in building the New Society - the New Nation.

[Convocation address delivered at the 87th Convocation of the University of Poona on 21.11.1993]

CONSUMER FORUM - A POWERFUL WEAPON

I thank the Consumer Education and Research Centre for giving me this opportunity to deliver the valedictory address. This is the second occasion on which I am delivering the valedictory address at the workshop organised by this Centre, the first occasion being in Delhi. I had also an opportunity to visit the Centre's Headquarters in Ahmedabad. As far as I know, this is one of the foremost organisations in the country which have devoted themselves exclusively to the cause of the protection of the interests of the consumers through research and education as well as through the use of the media and the law. I wish many such organisations were established in all parts of the country. There was always a need of such centres. But with every passing day, the need is being multiplied on account of various factors. The growth of consumers, the multiplicity of the goods and the services offered, multiplication of the producers and suppliers of the goods and the services, the liberalisation of the economy, and the free play of the market forces and the growth of laws and judicial decisions dealing with the consumers' rights, duties and obligations, over the years, all call for specialised and professional organisations like this Centre in large numbers, today. I am happy to note that in spite of several limitations and difficulties in terms of manpower and funds, this organisation has been carrying on its work devotedly and steadfastly all these years. With the establishment of the exclusive forum for cheap and expeditious disposal of the grievances of the consumers and a steady increase in the number of consumer cases landing in the Supreme Court, the assistance of such organisations in deciding the cases would be gradually more and more in demand. I am sure, when called upon to do so, this organisation with its expertise in the field and the relevant researched material available with it, would render its valuable service to the Courts and enable them to take not only appropriate decisions in particular cases, but also to lay down sound foundations of the consumer law in this country.

The subject of the present workshop is 'Consumer interest and monopoly services' with reference to municipalities. Many experienced activists and experts in the field have participated in the discussion during the last three days and although I have no first-hand knowledge of the discussion, I am sure they must have shed enough light on the various aspects of the subject. It is possible that what I am going to say in this address has already been said by the participants. If that is so, my address will be useful as a summary of the discussion made so far. If, however, my address touches some new points or approaches the subject from a different angle, it will have added yet another point of view to the discussion and I hope for a better perspective.

It is necessary first to understand the nature of municipal services. The municipality in any town is entrusted broadly with two types of services, viz., the obligatory and the discretionary services. Among both the obligatory and the discretionary services, there are some services which are directly paid for whereas others are not directly paid for but are rendered by using municipal funds. These funds consist of taxes, levies, duties, fees, fines and penalties as well as grants received from the respective State Governments. Thus the municipal funds consist of monies which are ultimately contributed by the members of the public in one form or the other. However, the services rendered by using municipal funds are for all appearances free. It is also possible that when the services are charged, they are partly subsidised from the municipal funds and the charges are not commensurate with the costs of the services. A further distinction which has to be made in the services rendered by the municipalities and that distinction is important for our present purpose. There are services which are exclusively entrusted to the municipality and others which are rendered by it in competition with others.

When the services are exclusively entrusted to municipality and they are absolutely necessary for comfortable living and working conditions, they constitute an essential aspect of the right to live which is not only fundamental but an inherent human right. In this class of services may be included, the supply of water, electricity, the provision of drainage facilities and facilities for disposal of waste and garbage.

The maintenance of cleanliness in all public properties and facilities including roads, public grounds and parks, public markets, public toilets etc. also go with these services. This class of services also includes the services rendered to prevent generation and emission of poisonous and obnoxious gases, discharge of polluting substances, storage of explosive and inflammatory substances, cesspools and pot-holes, dangerous structures, animals etc. Positively, these duties require the municipality to maintain adequate electricity generating and supplying equipment, water supplying, filtering and purifying system, disinfection and vaccination services, firefighting services etc. Some of the municipalities also undertake the supply of other services either exclusively or in competition with others such as education, transport, supply of cooking and burning gas, provision of theatres and halls for public meetings and performances, amusements and sports, supply of milk, sight-seeing and tourism services, libraries and reading rooms, etc.

Municipality is a public institution and is managed most of the time by elected representatives of the people and a permanent staff which is paid from out of the municipal funds. It is set up with the specific object of rendering civic services to the inhabitants within its jurisdiction. It constitutes an administrative unit and is a part of civil administration. In the discharge of all its duties and obligations, therefore, it is accountable both as a public institution and as a provider of the services and goods.

When it is exclusively entrusted with providing certain services, its liability arises out of the fact that being the sole provider of the services in question, it wields a power over the comforts of its inhabitants, the degree of the comforts depending upon the nature of the services rendered. In respect of such services, the inhabitants are reduced to captive consumers since they have no alternative to fall back upon. Being the monopoly provider in the case of such services, the municipality wields almost a power of life and death when the services in question not only affect the quality of life but its very existence. Hence whether they are paid for or not, the municipality is under an obligation to provide them to its inhabitants regularly,

adequately and properly. An irregular or inadequate or improper provision of the services by itself may give a cause of action against the municipality. In such cases, the liability of the municipality need not arise under any statutory provision. Being a tortious wrong, it arises even independently of it and is absolute. In the case of such services, further, the liability of the municipality also arises out of the principle of accountability. The municipality being a public body run with the help of the public funds, it is per se accountable to its inhabitants for the management of its affairs. Thus, in the case of monopoly services which are essential for the comfortable living of the inhabitants, whether they are paid for or not, the liability of the municipality is grounded both in tort as well as in its accountability.

As regards the non-essential services, the nature and degree of liability of the municipality varies depending upon whether it has the monopoly in providing the said services and whether the services are charged or are rendered free. Where the services are monopolised by the municipality and the inhabitants are required to depend upon them alone, the responsibility of the municipality arises out of its accountability when the services are free. When the services are not monopolised by the municipality and they are not paid for, the liability of the municipality will still arise out of its accountability. In both cases, however, the individual consumers may not be entitled to claim compensation from the municipality. In cases where services are not monopolised and are paid for, the liability of the municipality will arise both on account of its accountability as a public body and as well as on account of its contractual obligation as a supplier of services. It will thus be seen that the thread of accountability runs through the municipal services whether they are monopoly services or not and whether they are essential or non-essential and whether they are paid for or are rendered free. This is because the municipality is a public body.

It is necessary to stress the importance of the principle of accountability in this connection.

Consumer movement has to be looked upon in a larger perspective. It is essentially a movement for securing accountability of the

manufacturers and suppliers of goods and services. The remedies by way of the replacement of goods and damages are only a means to secure the accountability. Whether, therefore, it is a private or a public body, whether it is in a free market or a socialist economy, so long as the manufacturers and suppliers of goods and services are made accountable for their acts of omission and commission, the real purpose of the consumer movement is served. It would have made those who manage the economic affairs effectively responsible to the consumer and consequently to the people at large.

Today, particularly after the collapse of the so-called socialist economies, the world is in search of an alternative to manage its economic affairs in a rational manner. The resources and particularly the non-renewable resources have to be used economically and the supply of the best goods and services at the cheapest possible prices is to be ensured to all the members of the society. In the capitalist economy, this is left to the market forces, and it is hoped that they will achieve this result in course of time when demand and supply will balance each other and the best of the goods and services will eliminate the rest from the market. But this presumes that consumer is the king and the supply is according to the market is free. In practice, both are a myth. The market forces are not free. The monopolies which today are also operating on gigantic scales in the form of multinationals, do not allow the market forces their uninterrupted play and dictate to the consumers what they will buy, in what form, and at what price. Even assuming that monopolies are curbed-which is a far cry, they are growing in size every passing day with mergers and take-overs - the balance that the market forces achieve is only in the long run. In the words of J.M. Keynes, "in the long run, we are all dead". The point is, in the capitalist economy, there is no free market to ensure the survival of the best and the cheapest product and service, at any given point of time. What is worse, in the competition which is the soul of the free market economy, the resources of the society are unwantonly and indiscriminately exploited and wasted.

In the socialist economies, the production of goods and services and their supply are managed by the paid servants of the State or of the public corporations and bodies. The bureaucrats are accountable at best to their bosses but not to the consumers. In fact, in such economies, the consumers are more helpless than under monopolies in the capitalist economies.

Thus, the consumer is at the receiving end and is a helpless victim under both the economies. The question, therefore, is not so much of what economic structure we should live in but whether the consumer and the people have an effective say in the management of the economic affairs. In other words, whether there is an economic democracy. The only sure way to attain economic democracy is to secure accountability of those who are actually managing the day-to-day production and distribution of the goods and services, whether in the private or public sector and whether in a capitalist or socialist economy.

The problem of economic accountability has also to be looked at from another angle, in the present context. Today on account of the fast depletion of the natural resources and particularly, the non-renewable resources because of their indiscriminate and wasteful exploitation and the use of dangerous technologies leading to environmental pollution and ecological imbalance and also the production of dangerous products and substances, the quality of life of the people is being adversely affected. The very existence of human life, not to speak of the other life, is in danger. Today the consumer is interested not only in good quality and cheap products and services but also in clean and healthy products and services but also in clean and healthy products and services, in the use of clean technology for their production and distribution, and in a healthy environment to live in. In short, he is also interested in a good quality of life. The consumer movement, therefore, has, today not only to concern itself with securing the best and the cheapest products and services, but also with ensuring the healthiest and cleanest products and services produced through cleanest technology safeguarding the health, the environment and the ecological balance.

The consumer movement has to achieve yet a larger objective. It has to ensure clean, corruption-free and efficient working of the society. It has to introduce a new work-culture which is essential for every society whatever its economic structure - capitalist or socialist. The extent of the success of the consumer movement in introducing the new work-culture will depend upon the range of goods and services brought within its sphere. There is, therefore, a need to bring within its jurisdiction more and more goods and services whether they are produced and catered to by private or public bodies. The activists in the consumer movement have also to pursue the movement vigorously keeping in view this larger objective.

The municipality, and for that purpose all public bodies and the services they render are to be judged and evaluated from various angles. The accountability is the most potent instrument in the hands of the consumers and, therefore, of the people, to make all public bodies responsive to the needs and expectations of the people. No other means in the hands of the people is as effective as the weapon of accountability to ensure clean, efficient and economic service from the public bodies. The society can get rid of corruption, nepotism, inefficiency, delays and waste in public administration by making the individual officers in charge of the respective services responsible for their acts of omission and commission, their deficiencies, delays, negligence and indifference. Very recently, the Supreme Court in the case of *Lucknow Development Authority* [JT 1993 (6) S.C. 307] has fortunately spelt out the need for making the individual officers responsible for their acts of omission and commission by recovering from them the damages awarded to the aggrieved consumers. This was a long felt need. By awarding compensation only against the public bodies, their administration and services would never have improved, since the amount of compensation comes from the public funds which means from the members of the public. By laying down the principle of the liability of the individual public servants for payment of damages for their acts of omission and commission, the Court has done a signal service to public life in general. It is now for the consumer movement to utilise this advancement in law and to strive

to ensure clean and efficient administration of all public bodies including that of the municipalities.

In proper cases, this goal can be pursued through public interest litigation. That will keep the public officers constantly on their toes. Let everyone who holds public office know that he is the trustee of the society in respect of the functions entrusted to him. The power that is given to him is for discharging his duties and responsibilities efficiently. If he is remiss in any manner in discharging them, he would become personally liable for it to the people and will have to compensate the aggrieved consumer.

To ensure accountability as well as liability, whether of public sector or private sector undertakings or of the individuals holding public offices in public institutions like municipalities, it is necessary for the consumers to have access to all requisite information. Freedom of information is, therefore, not only relevant but also important from the point of view of the consumers. At present, there is no statute such as the Freedom of Information Act as obtains in some other countries. I am not aware if the Central Government is contemplating any such legislation. However, when it does decide to bring such legislation, the legislation should cover not only the public but also the private sector. It must, in this connection, be remembered that the distinction between public and private sector is more artificial than real. Both use public funds for production and supply of goods and services. The private enterprises rely on share money, loans and advances from banks and financial institutions and also get benefits of subsidies, exemptions etc., from the Government. No private entrepreneur uses his own funds. The only distinction between private and public sector is that whereas in the private sector, the public funds are deployed and managed by private individuals, in the public sector, they are used by public officials. Both are trustees of the society for the deployment in the deployment and utilisation of the funds. Hence, both sectors should be amenable to freedom of information legislation when it is brought. Secondly, whatever may be the arguments advanced against extending the scope of such legislation to all the departments of the Government on grounds of public interest, security of the State etc., no such argument is available for

bringing the public institutions like the municipalities within the purview of the legislation. In fact, the experiment of open Government should begin with the local bodies like the municipalities. At present, the Courts do call upon such bodies to disclose the relevant information as and when specific cases come before them. However, before launching an action against such bodies, the consumers are handicapped for want of necessary information and in the absence of such legislation, they cannot have access to the information. Hence, whatever may be the reservations of the Government with regard to the extension of such legislation to certain information from some departments on the ground of security of the State etc., there is no reason why the legislation should not be brought forth immediately at least to cover the private and public sector undertakings as well as local bodies like the municipalities. The freedom of information is an important adjunct to the consumer movement and a legislation on the subject will further strengthen the power of the consumer movement.

In the form of the consumer forum, the people have acquired a powerful weapon which no other social development so far had given to them. If properly wielded, this weapon can bring about the desired social change in the most peaceful and constitutional manner. The consumer movement in future will have to direct itself towards this larger goal as well, principally by using the instrument of accountability. The improvement in the administration of the public bodies like the municipalities which are the lowest organs of civil administration would go a long way in setting a pace and tone for clean and efficient administration in all Government, semi-Government and other public institutions at all levels and in all fields. Historically, that will be the most covetable and enviable permanent social gain for the nation. The consumer movement being essentially an instrument of social empowerment, has to be used for social change and progress. We have to elevate its image from a mere grievance redressal forum to a social revolutionary force. As I have indicated earlier, it has all the potentialities to be one. It all depends upon how we operate it. In this larger task, I wish all the activists in the movement every success.

[Speech delivered at the national workshop on Consumer interest and monopoly services at Madras on 28.11.1993]



Ever since he was appointed to the Bench of the Supreme Court of India, Justice P.B. Sawant had won the acclaim of everyone, including the legal profession and human right activists as a fair, fearless and forthright judge. His judgments which are incisive and indepth have lent new dimensions to jurisprudence at the highest level.

Born on June 30, 1930, Justice Sawant completed his B.A. (Special) Honours degree in Economics at the Bombay University where he also obtained his LL. B. degree as well.

Having obtained his Law Degree, Justice Sawant practised as an advocate in the Bombay High Court on the original and appellate side and in the Supreme Court in all the branches of law, civil, criminal, industrial, service, elections and co-operatives.

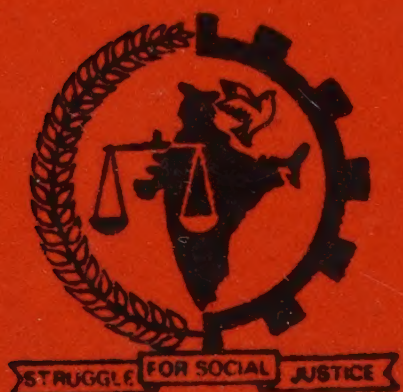
Justice Sawant also functioned as a lecturer in the New Law College, Bombay from 1965 to 1966 in the Private International Law and Constitutional Law.

Justice Sawant's brilliance, erudition and legal acumen found a place for him on the High Court Bench of Bombay in 1973.

After serving the High Court with great distinction, for sixteen years, Justice Sawant was elevated to the Supreme Court Bench on October, 6, 1989 a position which he has held with great aplomb and grace.

An eloquent speaker and a prolific writer, Justice Sawant has contributed to the various fields, legal, social, economic and political, to an ample measure.

An ardent adherent of humanist Mahathma Phule, Justice Sawant is greatly influenced by his thoughts.



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